

**NOTICE OF AVAILABILITY (NOA)
FOR
UNITED STATES ARMY RESERVE
REAL PROPERTY EXCHANGE**

**E. Earle Rives US Army Reserve Center
1120 North Church Street
Greensboro, North Carolina 27401**



U.S. DEPARTMENT OF ARMY

When referring to this offering, please identify it as:
“NOTICE OF AVAILABILITY for USAR REAL PROPERTY EXCHANGE:
Greensboro, North Carolina”

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*****Note: Offers will be subject to the terms and conditions contained in the attached Appendices, unless otherwise negotiated, and should be reviewed carefully by Offerors before submission of applications in response to this NOA.**

I. INTRODUCTION

The U.S. Army Reserve (USAR) owns a number of properties throughout the United States that are improved with USAR facilities. New development and changing land use patterns in the vicinity of these properties have created value in them for higher and better uses. By offering these properties in exchange for existing and/or to be constructed facilities, the USAR will update and strategically realign its inventory of training facilities.

The Real Property Exchange (RPX) Program is conducted under the legislative authority of 10 USC 18240, as amended (see: **Appendix 1**). Commonly known as the “Exchange Authority,” this legislation permits DOD reserve components to convey certain real property assets to States, local governments, local authorities, or private parties in exchange for facility or facilities, existing and/or to be constructed, including utility services for the facilities. The cost of the Replacement Facilities must be of a combined value at least equal to the fair market value of the property to be conveyed, as determined by the Government.

Pursuant to the Exchange Authority, acceptance of replacement facilities or additions to an existing facility requires the Deputy Assistant Secretary of the Army for Installations, Housing and Partnerships {DASA(IH&P)} to determine that the facilities:

- (1) are complete and usable, fully functional, and ready for use;
- (2) satisfy all operational requirements; and
- (3) meet all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.

In this Notice of Availability (NOA), the Government is offering to convey fee title to the land and facilities of the E. Earle Rives U.S. Army Reserve Center consisting of approximately 4.41 acres of which approximately 0.3 of an acre is in the right of way of Church Street, and another approximately 0.4 of an acre in the right-of-way of Norfolk Southern Railroad, located within Greensboro, North Carolina. This property is offered in exchange for the addition to the existing Area Maintenance Support Activity (AMSA) 122, Charlotte, NC hereinafter referred to as the Replacement Facility.

The NOA process established for this RPX Project is structured to ensure that the Government receives the best value from a qualified and responsible Offeror. The exchange process is composed of the following four steps, discussed in detail in Section V, pages 17-24 of this NOA:

- (1) Qualification Requirements. Interested parties (or “Offerors”) must meet the qualification requirements of this NOA by submitting a description of the qualifications, experience and past performance of the team that will fund and satisfy the Government’s objective, documentation demonstrating the Offeror’s financial and technical capability and capacity to perform, and a line of credit from a financial institution. Interested parties must also submit a deposit to fund the estimated cost of the administrative actions required to complete the proposed exchange.

- (2) Submission of Applications. Offerors provide written submissions which satisfy the requirements set forth in this NOA.
- (3) Offeror Evaluation Process. An Evaluation Board (EB) reviews the applications which have been received from Offerors and selects an Offeror as a conditional Exchange Partner, subject to approval by the DASA (IH&P). After DASA (IH&P) approval, the Exchange Partner enters into a Letter Agreement (**Appendix 3**) with the USACE Savannah District. The Letter Agreement is in furtherance of good faith and exclusive negotiation of a Real Property Exchange Agreement (**Appendix 4**) between the Exchange Partner and the Government. Either party may terminate negotiations prior to the execution of the Exchange Agreement.
- (4) Exchange Agreement. The specific business terms and legal conditions associated with the exchange will be documented in the Exchange Agreement, including draft conveyance documents. Final execution of an Exchange Agreement requires completion of required National Environmental Policy Act (NEPA) analysis. The Exchange Partner may do more environmental work to comply with the Exchange Partner's due diligence requirements.

II. THE EXCHANGE PARCEL

A. GENERAL.

The E. Earles Rives U.S. Army Reserve Center (or the Exchange Parcel) offered for this RPX Project contains 4.41 acres, more or less. Approximately 0.3 of an acre is in the right-of-way of Church Street, and approximately 0.4 of an acre is in the right-of-way of Norfolk Southern Railroad. There are 5 major building improvements on the property totaling 22,567 square feet. These building improvements were built from 1956 to the 1990s. The building improvements do not support the highest and best use of the site.

The Exchange Parcel is in the northeast section of Greensboro in Guilford County, North Carolina. It is located across the street from Moses Cone Hospital, just north of Wendover Avenue (Highway 70) a major corridor that serves the area. The trend in the area is towards development for medical offices.

The Guilford County Assessor's Office further identifies the Exchange Parcel as Parcel Number 0026677. The legal description is included in the deed to the United States recorded in Deed Book 1669, Page 235 in the Guilford County Register of Deeds. The actual boundary lines are further defined in the survey (Appendix 8).

B. EXCHANGE PARCEL LOCATION/AREA

E. EARLES RIVES U.S. ARMY RESERVE CENTER

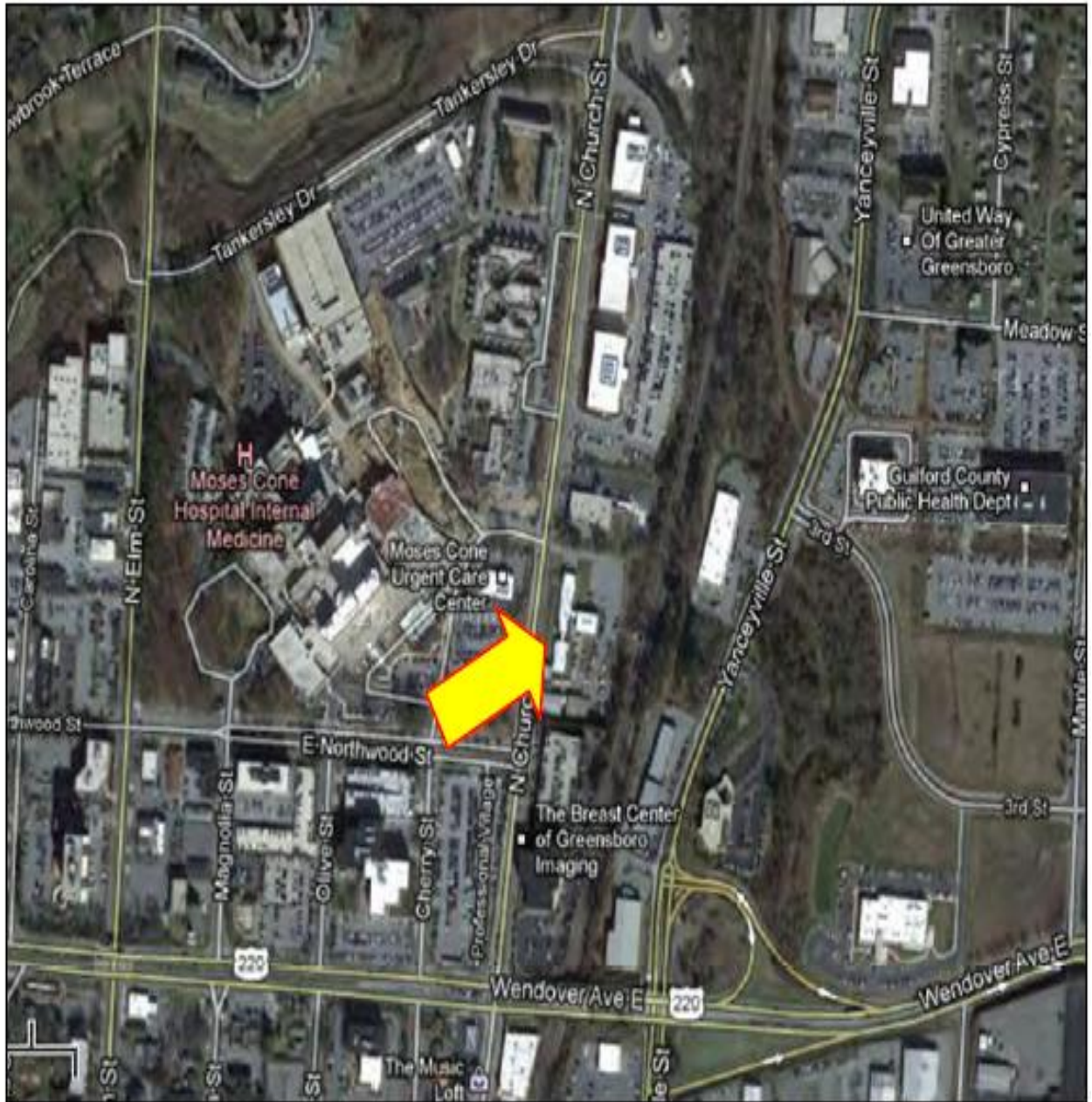
EXCHANGE PARCEL PHOTOS



EXCHANGE PARCEL LOCATION/AREA



EXCHANGE PARCEL LOCATION/AREA



EXCHANGE PARCEL PHOTOS



EXCHANGE PARCEL PHOTOS



EXCHANGE PARCEL PHOTOS



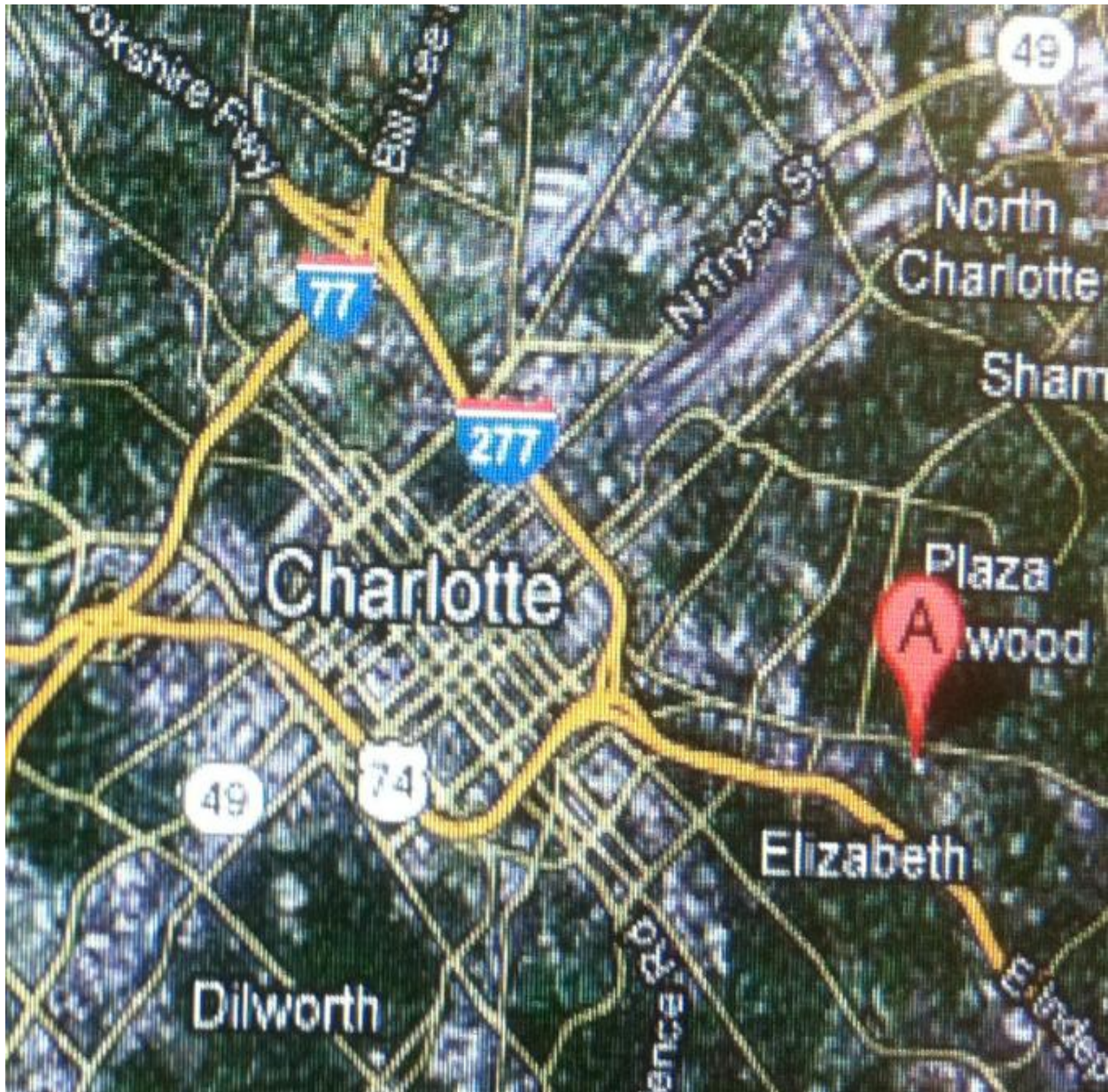
EXCHANGE PARCEL PHOTOS



**REPLACEMENT FACILITY CONSTRUCTION SITE
CHARLOTTE USARC, 1330 WESTOVER STEET, CHARLOTTE, NC**



REPLACEMENT FACILITY LOCATION/AREA



The address for the Exchange Parcel is: 1120 North Church Street and is located 0.2 miles North of Wendover Ave/Hwy22 and is on the East side of North Church Street within the City of Greensboro, Guilford County, North Carolina.

C. SITE PLAN

The Exchange Parcel is an irregular shaped parcel of land that has approximately 500 feet of frontage along the east side of Church Street. The depth of the site varies based on point of reference, but is not longer than approximately 399 feet. Street access to the parcel is from Church Street. With respect to utilities, electric, natural gas, telephone, internet, public water, and sewer services are available at the Exchange Parcel. The Exchange Parcel is located across the street from Moses Cone Hospital. The trend in the area is towards development for medical offices. The site to the north was zoned for industrial use in the past and occupied by Tyco Electronics. The site was sold for development of a multi-tenant office complex. The building just to the south has also been developed with a multi-tenant office building with a parking deck. A few other medical buildings have been developed further north along Church Street. The land area to the north of the Exchange Parcel towards Cornwallis Drive is mixed in use, with a few small industrial buildings intermixed with office and some retail. The land area to the south and west of the hospital is fully developed with no land available. A few offices, from small single tenant to multi-story buildings, are located to the south of Wendover Avenue as well other medical facilities along Wendover Avenue itself. Medical facility development has also expanded to the east, primarily as a result of a lack of vacant land available for development.

D. ZONING and LAND USE

Although the Government is exempt from local zoning requirements, the Exchange Parcel currently lies within the boundaries of Greensboro, Guilford County and is zoned CU-PI-Public & Institutional District. It is intended to accommodate mid-and large-sized public,quasi-public and institutional uses which have a substantial land use impact or traffic generation potential. It is not intended for smaller public and institutional uses customarily found within residential areas. The current zoning is consistent with the trend in the neighborhood. There are no known moratoriums affecting the exchange parcel. Verification of the present zoning and determination of permitted uses there under, along with compliance of the Exchange Parcel for present or proposed future use), is the responsibility of the Exchange Partner; the Government makes no representation in regard thereto. Further, the Government does not guarantee that any zoning information is necessarily accurate or will remain unchanged. Any inaccuracies or changes in the zoning information shall not be cause for adjustment or rescission of any contract resulting from this NOA.

E. ENVIRONMENTAL

1. Environmental Condition

Consummation of the final exchange is contingent on all environmental clearances and reviews. An Environmental Condition of Property (ECP) for the Exchange Parcel (**Appendix 7**) was conducted September 2012 and is available at (<http://www.sas.usace.army.mil/re/acquisitions.html>). The ECP is an assessment of the environmental condition of the Exchange Parcel based on observation and review of available environmental information and leads to a determination of whether future use(s) of the Exchange Parcel poses a threat to human health and the environment. It is intended that the Government will provide the Offeror which is selected as the Exchange Partner from this NOA process with a Finding of Suitability to Transfer (FOST) prior to consummation of the Exchange Agreement. The FOST documents the ECP findings, describes any remedial actions taken, the current environmental condition of the Exchange Parcel, and identifies any restriction on future use of the Exchange Parcel. The Exchange Partner may perform additional environmental work to satisfy these requirements. At the time of transfer, the Government will provide a Quitclaim Deed to the Exchange Parcel providing certain covenants and warrants to the environmental condition of the Exchange Parcel as required by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Those covenants will include confirmation that all required remedial action to protect human health and the environment has been taken. The Exchange Partner will be responsible for the cost of the preparation of the FOST as specified in the draft Letter Agreement (Appendix 3).

2. Environmental Impact

It is the intent of the Government that prior to execution of the Exchange Agreement; the Government will have prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) or an Environmental Impact Statement (EIS) and Record of Decision (ROD), as appropriate, for the proposed exchange. Completion of the EA/FNSI or EIS/ROD fulfills requirements of the National Environmental Policy Act (NEPA) of 1969, as amended. The Exchange Partner will be responsible for the cost of the appropriate NEPA action as specified in the draft Letter Agreement (Appendix 3).

F. LEGAL DESCRIPTION

The Government will provide a legal description and survey suitable for recordation of the Exchange Parcel to the Exchange Partner prior to entering into an Exchange Agreement.

III. FACILITIES CONSIDERATION

As consideration for the Exchange Parcel, the Exchange Partner is required to provide a Replacement Facility to be located within the Charlotte USARC, Charlotte, NC. The proposed site for the Replacement Facility is Government owned. The Replacement Facility will include a

combination of supporting facilities that include an addition to the existing AMSA 122, construction of an access road, and construction of a POV parking lot as specified in DD Form 1391, Military Construction Project Data at **Appendix 2**. In accordance with the RPX authorizing legislation, the total consideration to be provided by the Exchange Partner for the completion of the Replacement Facilities must have a value at least equal to the fair market value of the Exchange Parcel as determined by the Government. The Exchange Partner's responsibility for construction under this NOA will include all elements of design, demolition, construction, deconstruction, and quality control required to deliver fully operational facilities at the location specified for the Replacement Facility. Further descriptions of the required facilities are shown on Exhibits A, B, C, D and E.

During the design phase, the Government may provide additional information to the Exchange Partner such as design codes/requirements. The facility shall be constructed in accordance with local building and construction codes. All construction activities and requirements at the Replacement Facility provided by the Exchange Partner under this NOA shall be subject to the Davis Bacon Act.

IV. ADMINISTRATIVE RESPONSIBILITIES/COSTS

The Exchange Partner will be required to fund the Government for administrative actions required to complete the proposed exchange. The estimated cost of \$72,050.00 is a line item in the proposal submission requirements, and payment is one of the qualification requirements for inclusion in the selection process for this RPX opportunity. The payment shall be in the form of a Cashier's or Bank Certified Check payable to the "Finance & Accounting Officer, USAED Savannah" and shall be retained until selection of the Exchange Partner. The funds will be treated as a deposit for completion of the Letter Agreement (**Appendix 3**) for the selected Offeror and returned to the Offerors not selected within ten (10) working days after Exchange Partner selection. The Letter Agreement provides that the Offeror will fund the U.S. Army Corps of Engineers (USACE) costs to complete the proposed exchange, including but not limited to all items listed in **Appendix 3 Attachment A**.

V. EXCHANGE PROCESS

A. STEP ONE – QUALIFICATION REQUIREMENTS AND APPLICATION EVALUATION FACTORS

Respondents to this NOA must satisfy all of the requirements for applications in order to be considered for selection as the Exchange Partner. Offeror submittals are to be organized and structured in conformance with the outline below. Submittals should be clear and concise, and provide only relevant material. All application materials shall be submitted in binders with a table of contents and tabbed section dividers. The requirements listed below must be received by USACE, Savannah District not later than the date and time specified in the Schedule in paragraph V.B.1..

1. Government Administrative Costs deposit. The deposit shall be in the form of a Cashier's or Bank Certified Check payable to "Finance & Accounting Officer, USACE Savannah" in the amount of \$72,050.00 and shall be submitted with the Offeror's application as provided in paragraph VI. A. 1.

2. Letter confirming a minimum available Line of Credit.

The Offeror shall provide a letter guaranteeing a minimum available Line of Credit in the amount equal to the total value of the proposal as listed in the schedule on pages 17- 21, paragraph V.A. 3. f., to be completed by the Offeror. This letter shall be from a reputable financial institution, as determined by USACE, incorporated in the United States of America, addressed to USACE, Savannah District (See Paragraph VI.A. 1. below), and guarantee that the Line of Credit will be available for the duration of the proposed exchange project.

3. Application Evaluation Factors

a. Factor 1. Offeror Profile. This section describes the requirement for a description of the Offeror's proposed team, including the design and construction firm(s) to be assigned to this Project. Required documentation includes: each firm's qualifications, relevant experience and past performance with projects of a similar nature, scope and scale. Also include: the legal organizational structure; identifying data on principals, partners, etc.; insurance coverage; and other basic matters for each corporate member of the team. (Resumes for key people, contractors, etc. should be included in **Appendix 6**.)

Each Offeror shall provide the following:

- The name, address, telephone, e-mails and fax numbers of each principal, partner and/or co-venture participating on Offeror's team and the name of the representative authorized to act on behalf of the team.
- Identification of any affiliation or other relationship between any of the members of the team responding to this application and any development company, parent company, or subsidiary.
- A description of Offeror's status indicating jurisdiction under whose law Offeror is organized and operating, and a brief history of Offeror's organization and its principals. And:
 - If the Offeror is a corporation, provide: 1) Articles of Incorporation and By-Laws; 2) Names, addresses of officers and participating principals; 3) Corporate resolution authorizing the proposed transaction; and 4) Summary of Corporate Activity and documentation that will be relied upon by the Government to assess the corporation's successful long-term operation.
 - If the Offeror is a partnership/joint venture, provide: 1) partnership/joint venture agreement; 2) Names, addresses of the

partners; and 3) each principal member's appropriate history and background, assigned areas of responsibility and any agreements or other documentation that will be relied upon by the Government to assess the partnership/joint venture's successful long-term operation.

- If the Offeror is a sole partnership, provide current address of the partner, and any agreements or other documentation that will be relied upon by the Government to assess the partnership's successful long-term operation.

Date and location of establishment/incorporation under the present name.

- The Dun & Bradstreet (D-U-N-S) numbers for all members of the Offeror's development team including, but not limited to: the principal, partner, and/or co-venture.
- An explanation of types of services the Offeror's firm provides and how they relate to this NOA and the RPX Project.
- An indication of whether Offeror ever maintained or currently maintains errors and omissions insurance and, if so, the amount of the coverage, the deductible, and the carrier of the insurance.

b. Factor 2. Relevant Experience. This section considers the extent of the Offeror's proposed design and construction firm's corporate and key personnel experience in successfully planning for, developing, and managing projects. The Offeror shall provide information about other projects performed by the Offeror and identified through any and all means (relevancy and recency), including but not limited to customer surveys and comments from Government agencies, if any.

Each Offeror shall provide the following:

- Relevant Project Experience – Provide information for at least three (3) projects for which Offeror (or team member) has completed and which demonstrate an ability to perform a project of the magnitude and complexity of this RPX Project - on time and within budget. For each project provided, please include the following:
 - Name, address, type and size of each project;
 - Name and address of the owner of each project;
 - No more than three (3) photos of each project (each photo not exceeding 8-1/2" by 11" in size) if available;
 - A description of how the project achieved an acceptable level of quality in the project planning, phasing/sequencing, design and construction, and coordination of roles and responsibilities amongst the team members;
 - A description of project economics and finance, including:

- 1) total development costs including hard and soft costs; 2) financing including debt and equity amounts and sources; 3) ownership structure including percentage of ownership by principal members; 4) economics of sharing arrangements between principal members or investors including identification of sources of return to the owners and investors;
- Any other pertinent information necessary to sufficiently describe each project.

c. Factor 3. References. Provide the name, address, and telephone numbers of at least five (5) clients or other stakeholders for whom Offeror (or team member) has successfully developed projects within the past ten (10) years. These client references should include the owners of or persons directly involved with projects referenced above. In addition, Offeror is encouraged to provide the above information from such other stakeholders that the Offeror considers important to understanding the success of Offeror's work. These references should be able to assess the degree of client (or other stakeholder) satisfaction. The Government intends to contact all the references that the Offeror lists. Offeror's inclusion of the information requested above will be considered authorization to do so. The Offeror's references may be asked to discuss the following:

- Quality of the working relationship with the client (the tenant and/or the owner);
- Professionalism and integrity with which Offeror conducted business;
- Responsiveness to the client's needs and expectations;
- Level of communication;
- Value added to the project as the result of cost savings, favorable financing positive asset management, etc.;
- Delivery of the project within budget and on schedule;
- Quality control of the project design and construction;
- Other relevant aspects in the management of a project development for a client.

d. Factor 4. Dispute Resolution. State whether the Offeror (or a team member) has ever been terminated for default, noncompliance, or non-performance on a contract or Lease, and provide a detailed description. List all material instances and provide a detailed description of the litigation or formal Alternative Dispute Resolution (ADR) processes (e.g. binding arbitration) during the last ten (10) years and involving a claim in excess of \$50,000 to which any principal member has been a party.

e. Factor 5. Financial. This section considers the extent of the Offeror's experience in dealing with the financing of projects. Additionally, the Offeror's proposed financial strategy and capability for this project will be considered.

- Offeror shall provide audited financial statements (or 10Ks if the entity is publicly owned) for the last three (3) years. Parent and holding

companies should submit audited financial statements if they intend to commit resources to a developer or joint venture in which they own a controlling interest. The financial statements should be prepared in accordance with generally accepted accounting principles (GAAP) and the financial auditor must be an independent Certified Public Accountant or an independent licensed public accountant. Auditor contact information should also be provided.

- If audited financial statements have not been prepared for Offeror's corporation or partnership or if Offeror is an individual, in addition to financial statements, provide a complete and current personal financial statement for Offeror and all partners/officers.
- Apart from the references requested above, provide the names, addresses, telephone numbers, and e-mails of at least two commercial or institutional financial references from which the Offeror and each member of the development team has previously obtained financing. Attach a letter authorizing each reference to respond to inquiries from the Government relating to this NOA.
- Discuss Offeror's capability to secure operating capital for the projects as well as Offeror's capability to secure payment and performance bonds (or other types of security) for this RPX Project.

f. Factor 6. Project Implementation.

- Describe the Offeror's organizational commitment to the design and construction of the Replacement Facility and how the Offeror will respond to the Government during these phases.
- Include an organizational chart and staffing plan that identifies the roles and responsibilities of the members of the Offeror's team to be utilized in the design and construction of the Replacement Facility.
- Provide a summary design and construction budget per line item of Section 9 on page 1 of the DD1391 (**Appendix 2**) in same format.

B. STEP TWO – SUBMISSION OF APPLICATIONS

1. Deadline and Procedures for Submission of Applications. All submissions to this NOA by Offerors are due no later than 5:00 PM Eastern Standard Time on the date specified below and identified on the RPX Project website (<http://www.sas.usace.army.mil/re/acquisitions.html>). The Offeror shall submit one (1) original, complete application (stamped "Original" on title page) along with five (5) copies, plus one (1) electronic copy in the form of a CD or DVD. The application and copies shall be sent in one (1) package and clearly marked as a response to this NOA. The following information must appear in the lower left corner of the envelope:

“Sealed Application for: USAR Real Property Exchange”
Time: NLT 5:00 PM Eastern Standard Time
Date: 21 Dec 2012
Project Name: E. Earle Rives US Army Reserve Center

And addressed to:

U.S. Army Corps of Engineers
Savannah District Real Estate Division
Attn: CESAS-RE-A/Stephen Bruce
100 W. Oglethorpe Ave
Savannah, GA 31401

NOTE: Any subsequent modifications to the Offeror’s application shall be sent using one of the above methods only. In addition, the Offeror’s application should be labeled with the Offeror’s name, address, and name of contact person.

NOTE: Electronic, telegraphic, or facsimile offers and modifications will NOT be considered without the express written authorization of the USACE Savannah District Real Estate Division.

NOTE: Any application received after the time and date specified above will be rejected and returned to the Offeror unopened.

2. Cancellation of Notice of Availability. The Government is sponsoring this RPX Project solely for the purpose of achieving the goals established in the enabling legislation. While the Government intends to enter into an Exchange Agreement with an Exchange Partner, it is under no obligation to do so, and reserves the right to cancel this NOA and reject all application submissions. Further, the Government reserves the right to suspend or modify all aspect of this process and to waive informalities and minor irregularities in offers received where it is deemed by the Government in its sole discretion to be in the best interest of the Government.

3. Amendment of NOA by the Government. This NOA may be amended at any time by the Government, in its sole discretion. A Notice of Amendment shall be posted on the Project website and a written amendment shall be provided to each Offeror who has submitted a written submittal on or before the date of the NOA amendment. If this NOA is amended, then all terms and conditions that are not modified shall remain unchanged.

Offerors that have submitted their application prior to an amendment of the NOA shall be required to acknowledge receipt of such amendment by date and time specified in the amendment. Acknowledgment shall be made by signing and returning the amendment by mail to the address specified in paragraph VI.B.1.

4. **Amendment of Offeror's Written Submittal.** The Offeror may request an amendment of its previously submitted application to this NOA by providing the Government with a detailed description and explanation of the proposed changes which will be reviewed by the Government. To the extent that the Government consents to the proposed changes, such changes to the Offeror's previously written submittal shall be memorialized in a letter agreement and shall be executed by the appropriate representatives of the Offeror and the Government.

C. STEP THREE – OFFEROR EVALUATION PROCESS

1. **Evaluation Board (EB).** An EB will evaluate each Offeror's written submission to this NOA. The members of the EB will determine the overall value of the application to the Government and the potential for meeting the goals of this RPX opportunity in accordance with the Evaluation Process set forth in Section VII below. The Offeror's written application should contain all the information that the Offeror deems necessary to comply with the information required in this NOA. Each application will be evaluated on its own merit, independently and objectively. The Government may contact an Offeror in order to clarify certain aspects of the Offeror's application or to correct clerical errors.

2. **Evaluation of Applications.** The applications which are submitted with respect to this NOA will be evaluated by the EB. Selection of the best application by the Government will be based on an integrated assessment of the factors set forth in Section VII below and a determination of the application which best meets the Government's requirements of this RPX Project.

3. **Best and Final Offers.** In the event multiple qualified Offerors propose similar levels of Facilities Consideration, Offerors may be selected to participate in additional discussions of qualifications, development concepts, and potential additional facilities and/or additional value to be converted to real property improvements. If necessary, USACE reserves the right to request additional Best and Final Offers from a short list of qualified Offerors.

4. **Selection of the Exchange Partner.** Upon completion of submission evaluations, the EB will forward the name of the Offeror with the highest overall ranking to the DASA (IH&P) for consideration for selection to serve as the Exchange Partner for this RPX. The Offeror being referred shall be notified in writing by USACE of this referral and of the resulting decision of the DASA (IH&P). Upon selection by the DASA (IH&P), the Government and the selected Exchange Partner will initiate steps toward entering into a Letter Agreement and an Exchange Agreement.

5. **Post Selection Press Releases.** Following DASA (IH&P) approval and selection of the Offeror with the best application which has been submitted in response to this NOA, the selected Offeror agrees to provide the Government with the opportunity to review and **approve** any press release relating to this RPX Project **prior to** any release to the media. The Government shall, in its sole discretion, provide the selected Offeror with any comments in a timely fashion.

6. **Notification to Offerors not selected.** Within four (4) business days following the selection of the best application to this NOA, the Government will provide written notice to all other Offerors of non-selection. Checks which were received from Offerors which were not selected shall be returned within ten (10) business days of the confirmation by the DASA (IH&P) of the selection of the Exchange Partner.

7. **Letter Agreement.** The selected Offeror must execute the Letter Agreement (see: **Appendix 3**) no later than thirty (30) days following the confirmation by the DASA (IH&P) of the selection of the Exchange Partner.

8. **Required Schedules and Concept Designs.** Within forty-five (45) days following confirmation by the DASA (IHP) of the selection, the Exchange Partner shall furnish the following:

- Design and construction schedules (approximate durations of major milestones) and;
- Concept designs in accordance with requirements listed in Appendix 2.

D. STEP FOUR – EXCHANGE AGREEMENT

1. During this step, the specific terms and legal conditions associated with the exchange will be documented in a formal Exchange Agreement (**draft agreement at Appendix 4**). All administrative actions required to complete the Exchange Agreement will be completed, as well as all other appropriate documentation required. Such documentation includes the Congressional notification, NEPA analysis, and other documents needed to clearly articulate the terms of the exchange.

NOTE: The execution of the Exchange Agreement is not acceptance of the Replacement Facilities. Pursuant to the Exchange Authority, acceptance of Replacement Facilities requires the DASA(IH&P) to determine that the facilities:

- (1) are complete and usable, fully functional, and ready for occupancy;
- (2) satisfy all operational requirements; and
- (3) meet all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.

2. **Construction Monitoring Letter Agreement.** Concurrently and inclusive with the Exchange Agreement, the Exchange Partner shall enter into a Construction Monitoring Letter Agreement (CMLA) with USACE (**see draft at Appendix 5**).

VI. EVALUATION AND RATING PROCESS

A. **Qualification.** The members of the EB will evaluate the Offeror's application. The following must be received by the Government in a timely manner as specified in paragraph V.B.1. above in order for the EB to evaluate each Offeror.

1. Cashier's or Bank Certified Check in the amount of \$72,050.00 for payment of Government Administrative Costs.
2. A letter from a reputable financial institution incorporated in the United States of America providing a Line of Credit for the duration of construction in the amount equal to the total value of the Replacement Facility proposed in the Offeror's application.
3. Written Application including the elements described above relating to qualifications, experience, and past performance with respect to development of projects and properties of a similar nature, scope, and scale, as well as Offeror's financial capability/capacity to carry out the required construction of the Replacement Facility.

B. Individual Factor Ratings. Each evaluation factor will be rated as indicated below. The members of the EB will assign one of the following ratings to each factor.

- Exceptional (E): The Offeror has addressed substantially all of the elements of this factor in a manner that demonstrates superior added value above a satisfactory response and has addressed substantially all of the remaining elements in this factor in a manner that demonstrates high added value above a satisfactory response.
- Acceptable Plus (A+): The Offeror has addressed many of the elements of this factor in a manner that demonstrates some added value above a satisfactory response and has addressed substantially all of the remaining elements in this factor in a manner that demonstrates a satisfactory response.
- Acceptable (A): The Offeror has addressed substantially all of the elements in this factor in a satisfactory manner.
- Unacceptable (U): The Offeror has failed to address substantially all of the elements of this factor in a satisfactory manner or has simply failed to address substantially all of the elements in this factor.

C. Risk Factors. The members of the EB will determine evaluation factor ratings by drawing upon the strengths, weaknesses, and risks identified for each of the evaluation factors. In addition to the ratings above, a risk rating will be assigned to each of the individual factors. The purpose of this rating is to assess the level of risk associated with each Offeror. The members of the EB will assign one of the following ratings to each of the individual factors:

- Low Risk: Any weaknesses identified by the evaluators have little potential to cause disruption to the planning and implementation phases. Normal contractor/Government effort monitoring will probably minimize any difficulties.
- Moderate Risk: These are weaknesses identified by the evaluators that can potentially cause disruption to the planning and implementation phases. Special contractor/Government emphasis and close monitoring will probably minimize any difficulties.

- **High Risk:** These are weaknesses identified by the evaluators that have the potential to cause significant disruption to the planning and implementation phases even with special contractor/Government emphasis and close monitoring.

The members of the EB will document the strengths and weaknesses of the Offeror's submission and the potential impact on disruption to the planning and implementation phases of the Replacement Facility to justify the selection rating.

D. Overall Ratings. The members of the EB will assign an overall rating for each submittal as indicated below:

- **Exceptional (E):** The Offeror has addressed substantially all of the elements in all of the factors in a manner that demonstrates superior added value above a satisfactory response and has addressed substantially all of the remaining factors in a manner that demonstrates high added value above a satisfactory response.
- **Acceptable Plus (A+):** The Offeror has addressed many of the factors in a manner that demonstrates some added value above a satisfactory response and has addressed substantially all of the remaining factors in a manner that demonstrates a satisfactory response.
- **Acceptable (A):** The Offeror has addressed substantially all of the factors in a satisfactory manner.
- **Unacceptable (U):** The Offeror has failed to address substantially all of the factors in a satisfactory manner or has simply failed to address substantially all of the factors.

E. Arrangements for Inspection of the Sites. USAR and USACE will conduct an Industry Forum in Greensboro on 5 Dec 2012. Details of specific location and time will be posted on the RPX Project website (<http://www.sas.usace.army.mil/re/acquisitions.html>). At the time of the Industry Forum, arrangements will be made for inspection of the Exchange Parcel and directions provided to the location of the Replacement Facility construction site for individual inspection.

VII. PROJECTED SCHEDULE

	<u>Target Date</u>
• NOA Issued (FedBizOps)	14 Nov 2012
• Industry Forum	5 Dec 2012
• Offerors' Applications/Proposals Due	21 Dec 2012
• Evaluation Board convenes	3 Jan 2013
• Evaluation Board's Offeror Referral to DASA (I&H)	10 Jan 2013
• DASA (I&H) Selection of Offeror as Exchange Partner	24 Jan 2013
• Letter Agreement Executed	30 Jan 2013
• Exchange Agreement Executed (120 days)	late May 2013

VIII. QUESTIONS AND QUALIFICATION SUBMITTAL

Questions regarding the exchange process or the information contained in this NOA may be submitted by two means: 1) in writing to USACE Savannah District, Real Estate Division, or 2) on line using the RPX Project website (<http://www.sas.usace.army.mil/re/acquisitions.html>). Substantive question(s) and answer(s) regarding the exchange process or the information contained in this NOA, which do not contain proprietary information, will be posted to the website within two (2) business days following receipt of the questions(s).

IX. SPECIAL CONDITIONS AND LIMITATIONS

A. NO OBLIGATION. While the Government intends to enter into an agreement with an Exchange Partner selected through this NOA process, it is under no obligation to do so. Notification to Congress of the proposed real property exchange and approval of the Exchange Agreement rests with the DASA (IH&P), after favorable review by the Army Office of General Counsel. The Government reserves the right to cancel this NOA at any time, and/or to reject any and all submissions prepared in response. The Government is not responsible for any costs incurred by an Offeror in order to participate in this exchange process.

B. WAIVER

The Government reserves the right to waive informalities and minor irregularities in offers received if it is determined that such is in its best interest of the Government.

C. PROTECTION AFFORDED TO SENSITIVE MATERIAL

Information contained in materials submitted in response to this NOA will be afforded protection from public disclosure.

D. RIGHTS RESERVED

The Government reserves the right to hold exclusive negotiations with a selected Offeror that result in terms and conditions that differ from the terms and conditions originally offered. Furthermore, the Government reserves the right to terminate negotiations with the selected Offeror and initiate negotiations with others, if within twelve (12) months of selection of the Offeror it is determined that the Government will be unable to conclude successful negotiations with the selected Offeror.

E. HOLD HARMLESS

By participating in this exchange process, each Offeror agrees to hold the Government, its officers, employees and consultants harmless from all claims, liabilities and costs related to all aspects of this transaction. Under no circumstances shall the Government be liable for any real

estate brokerage commissions, finder's fees or other forms of compensation related in any way to activities undertaken by any person or entity as a result of this exchange process.

F. TITLE AND TITLE EVIDENCE

Conveyance of the Exchange Parcel to the Exchange Partner will be by Quitclaim Deed. Any title evidence desired by the Exchange Partner shall be at its sole cost and expense. The Government agrees to cooperate with the Exchange Partner or its authorized agent in this matter, and will permit examination and inspection of such deeds, abstracts, affidavits of title, judgments in condemnation proceedings, or other documents relating to the title of the exchange parcel and real property involved, as it may have available. The Exchange Partner will be responsible for any expense incurred in connection with title matters or survey of the Exchange Parcel. The Quitclaim Deed may be modified based on the outcome of all environmental analyses and studies or other legal requirements.

X. POINT OF CONTACT

Questions, clarifications and inquiries about this RPX opportunity should be directed to:

Stephen Bruce
Realty Specialist
Email: Stephen.w.bruce@usace.army.mil
PHONE: (912) 652-5201
FAX: (912) 652-5335

U.S. Army Corps of Engineers, Savannah District
Attn.: Real Estate Division
100 W. Oglethorpe Ave
Savannah, GA 31401

Appendix 1

TITLE 10. ARMED FORCES
SUBTITLE E. RESERVE COMPONENTS
PART V. SERVICE, SUPPLY, AND PROCUREMENT
CHAPTER 1803. FACILITIES FOR RESERVE COMPONENTS

10 USCS § 18240

§ 18240. Acquisition of facilities by exchange

(a) Exchange authority. In addition to the acquisition authority provided by section 18233 of this title [10 USCS § 18233], the Secretary of Defense may authorize the Secretary of a military department to acquire a facility, or addition to an existing facility, needed to satisfy military requirements for a reserve component by carrying out an exchange of an existing facility under the control of that Secretary through an agreement with an Executive agency (as defined in section 105 of title 5 [5 USCS § 105]), the United States Postal Service, or a State, local government, local authority, or private entity. The acquisition of a facility or an addition to an existing facility under this section may include the acquisition of utilities, equipment, and furnishings for the facility.

(b) Facilities eligible for exchange. Only a facility of a reserve component that is not excess property (as defined in section 102(3) of title 40) may be exchanged using the authority provided by this section.

(c) Equal value exchange. In any exchange carried out using the authority provided by this section, the value of the replacement facility or addition to an existing facility, including any utilities, equipment, and furnishings, to be acquired by the United States shall be at least equal to the fair market value of the facility conveyed by the United States under the agreement. If the values are unequal, the values may not be equalized by any payment of cash consideration by either party to the agreement.

(d) Requirements for replacement facilities. The Secretary of a military department may not accept a replacement facility, or addition to an existing facility, to be acquired by the United States in an exchange carried out using the authority provided by this section until that Secretary determines that the facility or addition--

- (1) is complete and usable, fully functional, and ready for occupancy;
- (2) satisfies all operational requirements; and
- (3) meets all applicable Federal, State, and local requirements relating to health, safety, fire, and the environment.

(e) Consultation requirements. The Secretary of a military department authorized to enter into an agreement under subsection (a) to convey an existing facility under the control of that Secretary by exchange shall consult with representatives of other reserve components to evaluate--

- (1) the value of using the facility to meet the military requirements of another reserve component, instead of conveying the facility under this section; and
- (2) the feasibility of using the conveyance of the facility to acquire a facility, or an addition to an existing facility, that would be jointly used by more than one reserve component or unit.

(f) Advance notice of proposed exchange.

(1) When a decision is made to enter into an agreement under subsection (a) to exchange a facility using the authority provided by this section, the Secretary of the military department authorized to enter into the agreement shall submit to the congressional defense committees a report on the proposed agreement. The report shall include the following:

(A) A description of the agreement, including the terms and conditions of the agreement, the parties to be involved in the agreement, the origin of the proposal that lead to the agreement, the intended use of the facility to be conveyed by the United States under the agreement, and any costs to be incurred by the United States to make the exchange under the agreement.

(B) A description of the facility to be conveyed by the United States under the agreement, including the current condition and fair market value of the facility, and a description of the method by which the fair market value of the facility was determined.

(C) Information on the facility, or addition to an existing facility, to be acquired by the United States under the agreement and the intended use of the facility or addition, which shall meet requirements for information provided to Congress for military construction projects to obtain a similar facility or addition to an existing facility.

(D) A certification that the Secretary complied with the consultation requirements under subsection (e).

(E) A certification that the conveyance of the facility under the agreement is in the best interests of the United States and that the Secretary used competitive procedures to the maximum extent practicable to protect the interests of the United States.

(2) The agreement described in a report prepared under paragraph (1) may be entered into, and the exchange covered by the agreement made, only after the end of the 30-day period beginning on the date the report is received by the congressional defense committees or, if earlier, the end of the 21-day period beginning on the date on which a copy of the report is provided in an electronic medium pursuant to section 480 of this *title* [10 USCS § 480].

(3) Section 2662 of this *title* [10 USCS § 2662] shall not apply to an exchange carried out using the authority provided by this section.

(g) Relation to other military construction requirements. The acquisition of a facility, or an addition to an existing facility, using the authority provided by this section shall not be treated as a military construction project for which an authorization is required by section 2802 of this *title* [10 USCS § 2802].

HISTORY:

(Added Oct. 30, 2004, P.L. 108-375, Div B, Title XXVIII, Subtitle A, § 2809(a)(1), 118 Stat. 2125; Jan. 6, 2006, P.L. 109-163, Div B, Title XXVIII, Subtitle A, § 2808(a), 119 Stat. 3508; Jan. 28, 2008, P.L. 110-181, Div B, Title XXVIII, Subtitle A, § 2807, 122 Stat. 541.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

2006. Act Jan. 6, 2006, in subsec. (a), added the sentence beginning "The acquisition . . ."; and, in subsec. (c), inserted "including any utilities, equipment, and furnishings, to be".

2008. Act Jan. 28, 2008, in subsec. (a), substituted "with an Executive agency (as defined in section 105 of title 5), the United States Postal Service, or a State" for "with a State".

Appendix 2 (1391)

1. COMPONENT AR		FY 2013 MILITARY CONSTRUCTION PROJECT DATA		2. DATE Nov 12	
3. INSTALLATION AND LOCATION Charlotte USARC Charlotte, NC			4. PROJECT TITLE AMSA 122 Addition		
5. PROGRAM ELEMENT 0532292A		6. CATEGORY CODE 214	7. PROJECT NUMBER CAR 13-NC100		8. PROJECT COST (\$000)
9. COST ESTIMATES					
ITEM		U/M	QUANTITY	UNIT COST	COST (\$000)
<u>PRIMARY FACILITIES:</u>					
Maintenance Building Addition		SF	6,943		(
Sustainability/Energy Measures		LS	-		(
<u>SUPPORTING FACILITIES:</u>					
Site Improvement		LS	-		(
MEP/Aprons		SY	7,567		(
Access Roads		SY	5,000		(
POV Parking		SY	520		(
Information Systems		LS	-		(
Antiterrorism/Force Protection		LS	-		(
TOTAL CONSTRUCTION COST					
Contingencies (5.0%)					
Supervision and Administration (5.7%)					
TOTAL PROJECT COST					
Equipment Provided By Exchange Partner				(Non-Add)	
10. DESCRIPTION OF PROPOSED CONSTRUCTION					
<p>Construct an Addition to existing Area Maintenance Support Activity (AMSA) 122. Buildings will be of permanent construction with reinforced concrete foundations; concrete floor slabs; reinforced concrete or masonry walls; low-slope or sloped roof; Heating, Ventilation and Air Conditioning (HVAC); and plumbing, mechanical, security and electrical systems. Supporting facilities include land clearing, paving, fencing, general site improvements and utility connections. A 10-ton overhead crane will also be provided. Accessibility for the disabled will be provided. Anti-Terrorism/Force Protection (AT/FP) and physical security measures will be incorporated into the design including maximum standoff distances from roads, parking areas and vehicle unloading areas. Sustainability/Energy measures will be provided. Facilities will be designed to a minimum life of 50 years. Energy efficiencies meeting, on average, American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) 189.1 standards through improved building envelope and integrated building systems performance.</p> <p>MISSION : Existing A/C Tonnage : 0</p>					
11. REQUIREMENT: 6,943 SF Adequate: 0 SF Substandard: 7,809 SF					

1. COMPONENT AR	FY 2013 MILITARY CONSTRUCTION PROJECT DATA	2. DATE Nov 12
3. INSTALLATION AND LOCATION Charlotte USARC Charlotte, NC		
4. PROJECT TITLE AMSA 122 Addition		5. PROJECT NUMBER CAR 13-NC100
<p>PROJECT:</p> <p>Construct Addition to existing AMSA 122. (Current Mission)</p> <p>REQUIREMENT:</p> <p>The maintenance shop addition will provide work bays and maintenance administrative support. A 10-ton overhead crane will also be provided.</p> <p>CURRENT SITUATION:</p> <p>IMPACT IF NOT PROVIDED:</p> <p>If this project is not provided, AMSA 122 will be forced to operate and train in facilities not properly configured to allow the most effective training to complete mission requirements. This will continue to have a negative impact on training and retention objectives.</p> <p>ADDITIONAL:</p> <p>A parametric cost estimate based upon project engineering design was used to develop this budget estimate. Sustainable principles will be integrated into the design, development, and construction of the project in accordance with Executive Order 13123 and other applicable laws and Executive Orders. This project has been coordinated with the installation physical security plan, and all physical security measures are included. All required anti-terrorism/force protection measures are included. Alternative methods of meeting this requirement have been explored during project development. This project is the only feasible option to meet the requirement. The Deputy Assistant Secretary of the Army (Installation and Housing) certifies that this project has been considered for joint use potential. The facility will be available for use by other components.</p>		
12. SUPPLEMENTAL DATA		
<p>a. Estimated design data:</p> <p>(1) Status:</p> <p>(a) Date Design Started..... -</p> <p>(b) Percent Complete As Of -</p> <p>(c) Date Design 35% Complete..... -</p> <p>(d) Date Design Complete..... -</p> <p>(e) Parametric Cost Estimating Used to Develop Cost..... <u>No</u></p> <p>(f) Type of Design Contract..... <u>Design -</u> <u>Bid - Build</u></p> <p>(g) An energy study and life cycle cost analysis will be documented during the final design.</p> <p>(2) Basis:</p> <p>(a) Standard or Definitive Design..... <u>No</u></p> <p>(b) Where Design Was Most Recently Used..... <u>N/A</u></p> <p>(3) Total Cost (c) = (a) + (b) or (d) + (e) (\$000):</p> <p>(a) Production of Plans and Specifications..... -</p> <p>(b) All Other Design Costs..... -</p> <p>(c) Total..... -</p>		

1. COMPONENT AR	FY 2013 MILITARY CONSTRUCTION PROJECT DATA	2. DATE Nov 12																				
3. INSTALLATION AND LOCATION Charlotte USARC Charlotte, NC																						
4. PROJECT TITLE AMSA 122 Addition		5. PROJECT NUMBER CAR 13-NC100																				
12. SUPPLEMENTAL DATA (d) Contract..... - (e) In-house..... - (4) Construction Award..... - (5) Construction Start..... - (6) Construction Completion..... - b. Equipment associated with this project will be provided by the exchange partner: <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">Equipment Nomenclature</th> <th style="text-align: left; border-bottom: 1px solid black;">Procuring Appropriation</th> <th style="text-align: left; border-bottom: 1px solid black;">Fiscal Year Appropriated or Requested</th> <th style="text-align: left; border-bottom: 1px solid black;">Cost (\$000)</th> </tr> </thead> <tbody> <tr> <td>IT Equipment</td> <td>OMAR</td> <td>2014</td> <td></td> </tr> <tr> <td>Collateral Equip</td> <td>OMAR</td> <td>2014</td> <td></td> </tr> <tr> <td>Furniture</td> <td>OMAR</td> <td>2014</td> <td></td> </tr> <tr> <td colspan="3" style="text-align: right;">Total:</td> <td style="border-top: 1px solid black;"></td> </tr> </tbody> </table> Point of Contact: Mr. Gregory, 703-806-6779			Equipment Nomenclature	Procuring Appropriation	Fiscal Year Appropriated or Requested	Cost (\$000)	IT Equipment	OMAR	2014		Collateral Equip	OMAR	2014		Furniture	OMAR	2014		Total:			
Equipment Nomenclature	Procuring Appropriation	Fiscal Year Appropriated or Requested	Cost (\$000)																			
IT Equipment	OMAR	2014																				
Collateral Equip	OMAR	2014																				
Furniture	OMAR	2014																				
Total:																						

Appendix 3

DRAFT

LETTER AGREEMENT

BETWEEN

THE UNITED STATES ARMY

AND

EXCHANGE PARTNER NAME

This Letter Agreement (LA) is made as of the ____ day of _____, 20____, by and between the United States of America, acting by and through the Department of the Army, U.S. Army Corps of Engineers, Savannah District (USACE), and *Exchange Partner Name* (hereinafter referred to as the “**Exchange Partner**”).

WHEREAS, Title 10, United States Code, Section 18240, allows the Secretary of Defense to authorize the Secretary of the Army to acquire a facility, or an addition to an existing facility, needed to satisfy military requirements by exchange of an existing facility;

WHEREAS, The Defense Authorization Act of 1998, Section 2813(a), codified at 10 United States Code 2695, authorizes acceptance of funds to cover administrative expenses related to certain real property transactions with a non-federal person or entity such that “...the Secretary of a military department may accept amounts provided by the person or entity to cover administrative expenses incurred by the Secretary in entering into the transaction.” Covered transactions are further described as follows:

1. The exchange of real property.
2. The grant of an easement over, in, or upon real property of the United States.
3. The lease or license of real property of the United States;

WHEREAS, the Exchange Partner’s proposal was selected in response to the solicitation dated_____, 20____, agreeing to the terms and conditions set forth in the solicitation package; and

WHEREAS, Certain activities (see Attachment A) relative to the Government property known as the Charlotte USARC are necessary to further facilitate the contemplated exchange per the above referenced solicitation.

Now Therefore:

1. PURPOSE AND INTENT

a. The Parties acknowledge that this LA is in furtherance of good faith negotiations in contemplation of the conveyance of the Government property known as the E. Earle Rives USARC, Greensboro, NC in exchange for a _____ as set forth in the solicitation.

b. This LA is specifically and solely intended to support all activities, to include those activities listed in Attachment A, necessary to complete the contemplated Exchange Agreement so that the exchange will be accomplished at minimal cost to the U.S. Government. This LA imposes no obligation on either Party beyond the terms and conditions of this LA, and either Party, at its sole discretion, may elect not to proceed with the contemplated exchange with no obligation or liability beyond the terms and conditions of this LA.

c. The Parties intend that this LA constitute a legally binding contract, notwithstanding the Parties have not yet entered into the Exchange Agreement. The Parties acknowledge that neither Party has made a decision concerning the contemplated exchange and that the Parties shall be obligated to proceed with the exchange only in the event the Parties execute a formal Exchange Agreement.

2. OBLIGATIONS OF THE PARTIES

a. In consideration of the services to be conducted or actions to be taken by USACE, listed on Attachment A, the Exchange Partner has furnished \$72,050.00, as provided for by said solicitation, to fund the estimated cost of the USACE services being provided therein. If the costs estimated by USACE under this LA are later forecasted to exceed the amount of funds available under this LA, USACE shall promptly notify the Exchange Partner of the amount of additional funds required to accomplish the items listed in Attachment A. While Attachment A is an attempt to identify the activities necessary to accomplish the contemplated Exchange Agreement, additional activities may subsequently be identified by the Government. If the required additional funds are not provided within 30 days of said notice, the Government will direct termination of the work under this LA. The Exchange Partner further understands that failure to provide the additional funds necessary to complete the actions for the contemplated exchange will preclude the formal execution of the Exchange Agreement as contemplated by the parties. On a monthly basis, if requested, USACE, shall provide to the Exchange Partner an accounting of the actual costs of work. Within thirty (30) days of completing the work under this LA, USACE shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, USACE, shall return to the Exchange Partner any funds advanced in excess of the actual costs as then known. Established Federal Government accounting procedures shall be used. Except as provided herein the amount of funds advanced by the Exchange Partner, under this LA, shall be nonrefundable.

b. Funds provided by the Exchange Partner shall be in the form of a Cashier's or Bank Certified check made payable to the "Finance and Accounting Officer, Savannah District" and forwarded to the following address with a copy of this LA attached.

U.S. Army Corps Engineer
Attn: CESAS-RE-TB (Ruth)
100 W. Oglethorpe Ave.
Savannah, GA 31401

3. MODIFICATION OR TERMINATION OF AGREEMENT

a. The Exchange Partner or USACE shall have the option to terminate this agreement by giving written notice to the other party, specifying the effective date of the termination of work, at least ten (10) days before such effective date. Within thirty (30) days following the effective date of the termination of work USACE shall provide to the Exchange Partner a final accounting of the actual costs of the work by USACE and return to the Exchange Partner any funds advanced in excess of the actual costs as provided in Article 2.

b. This LA contains the entire agreement between the parties regarding funding preliminary activities for the exchange of certain United States owned land at the E. Earle Rives USARC, Greensboro, NC for Exchange Partner's real property in the form of a _____ and any agreement hereafter made shall not operate to change, modify, or discharge this LA in whole or in part, unless that agreement is in writing and signed by the parties hereto. This LA shall not merge into any subsequent agreements by the parties to include the Exchange Agreement and all documents relating thereto.

c. This LA shall be in effect as of the date executed by both parties and shall remain in effect until the said Replacement Facility is completed and accepted by the Government or by written notice by a party to the other and after final accounting of funds under Article 2.a.

4. LIMITATION OF LIABILITY

The Government's obligation to pay any money under this LA is subject to the availability of appropriated funds to the Department of Army, and nothing in this LA shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, 31 U.S.C. 3142, as amended, provided that the Government shall otherwise comply with all applicable statutory requirements and its obligations under the terms of this LA.

5. DISPUTES

a. This contract is subject to the Contract Disputes Act of 1978, 41 U.S.C. 7101-7109 et seq., as amended. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

b. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

c. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by the following paragraph. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to a liability or amount or is not acted upon in a reasonable time.

d. A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer. For Contractor claims exceeding \$100,000, the Contractor shall submit with the claim a certification that the claim is made in good faith, supporting data are accurate and complete to the best of the Contractor's knowledge and belief and the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable.

e. If the Contractor is an individual, the individual shall execute the certification. If the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved or an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

f. For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date of which the decisions will be made.

g. The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

h. The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Office receives the claim (properly certified if required) or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6 month period as fixed by the Treasury Secretary during the pendency of the claim.

i. The contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action arising under the contract and comply

with any decision of the Contracting Officer who shall be the Chief of Real Estate, Savannah District, U. S. Army Corps of Engineers.

6. NOTICES

Notices pursuant to this LA will be sent by the parties to each other by U.S. Mail or by rapid courier (such as Federal Express) addressed to the following addresses, or such other addresses as the parties may from time to time designate to each other in writing.

To: **USACE**

U.S. Army Corps of Engineers, Savannah District
Attn: CESAS-RE-A (Bruce)
100 W. Oglethorpe Ave
Savannah, GA 31401

To: **EXCHANGE PARTNER**

Name
Address
City, State Zip

BASED ON THE FOREGOING, the Parties hereto, acting by and through their duly authorized representatives, have executed this Letter Agreement as of the day and year first above written.

THE UNITED STATES OF AMERICA

EXCHANGE PARTNER

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

ATTACHMENT "A"
COST ESTIMATE
E. Earle Rives US Army Reserve Center
GREENSBORO, NC
REAL PROPERTY EXCHANGE

TASK LIST

Appraisal Update and Review	\$12,500
Exchange Agreement Development & Administration	\$10,000
LA Development & Administration	\$2,000
Review of Plans and Specs/Construction	\$21,550
Attorney Review	\$5,000
Title 10	\$5,000
Bill of Sale	\$1,000
Quit Claim Deed	\$10,000
Audit	\$5,000

Total Estimated Costs:	<u>\$72,050.00</u>
-------------------------------	---------------------------

Prepared in accordance with Department of Defense Financial Management Regulation, Chapter 1, Volume 11A.

Note: Costs are subject to actual cost. Estimate includes all known tasks necessary to perform complete exchange process and is an attempt to identify the activities necessary to accomplish the contemplated Real Property Exchange; Additional activities may subsequently be identified by the Government.

APPENDIX 4

DRAFT

EXCHANGE AGREEMENT

This Agreement entered into this _____ day of _____, 20____, by and between,

The UNITED STATES OF AMERICA,
represented by the
DEPARTMENT OF THE ARMY,
hereinafter referred to as the Government

And

EXCHANGE PARTNER NAME,
hereinafter referred to as the EXCHANGE PARTNER.

WITNESSETH:

WHEREAS, the Government desires to acquire a "Replacement Facility" to be constructed on Government owned land at the Charlotte USARC located in Charlotte, NC described in Exhibit(s) A (DD1391) B (Project Summary), constructed by the EXCHANGE PARTNER and transferred to the Government upon completion;

WHEREAS, the EXCHANGE PARTNER, desires to acquire 4.41+/- acres of land, more or less, with improvements known as the E. Earle Rives U. S. Army Reserve Center, 1120 North Church Street, Greensboro, NC, owned in fee by the Government;

WHEREAS, authority for the Government to enter into this Agreement is found in Title 10, United States Code, Section 18240;

WHEREAS, pursuant to Section 18240(a), the Secretary of Defense has delegated to the Department of the Army his authority under Section 18240 to make such exchanges; and

WHEREAS, the **(Operating Agreement/Ordinance of/OTHER AUTHORIZING DOCUMENT FOR EXCHANGE PARTNER ENTITY)** ", dated _____, authorizes EXCHANGE PARTNER to execute this Agreement, and any and all documents related to this exchange (THIS SHOULD BE INCLUDED IN THE FINAL EXCHANGE PACKAGE AS BACKUP DOCUMENTATION).

THEREFORE, in consideration of the benefits conferred, the mutual covenants and conditions contained herein, and the duties and obligations incurred, the parties hereto agree as follows:

I. GENERAL PROVISIONS

A. The terms and conditions of this Agreement and its attachments and exhibits apply to and bind the successors and assignees of the parties hereto.

B. All of the provisions of this Agreement and its attachments and exhibits shall survive the settlement of the exchange of conveyances contemplated herein, and shall remain obligations of the parties hereto until satisfied.

C. The EXCHANGE PARTNER warrants that it has not employed or retained any person or selling agency to solicit or secure this Agreement or any contracts or obligations arising from this Agreement, upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement or require payment from the EXCHANGE PARTNER for the amount of such commission, percentage or contingent fee.

D. No member of or Delegate of Congress or Resident Commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise there from, but this provision shall not be construed to extend to this Agreement if made with a corporation for its general benefit.

E. The Government may, by written notice to the EXCHANGE PARTNER terminate the right of EXCHANGE PARTNER to proceed under this Agreement if it is found, after notice and hearing, by the Secretary of the Army or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by any agent or representative of EXCHANGE PARTNER, to any officer or employee of the Government with a view toward securing any contracts or obligations arising from this Agreement or securing favorable treatment with respect to the awarding or amending, of the making of any determinations with respect to the performing, of such contracts or obligations, provided that the existence of facts upon which the Secretary of the Army or his duly authorized representative make such findings shall be in issue and may be reviewed in any court of competent jurisdiction.

F. Neither the EXCHANGE PARTNER nor its contractor(s) will discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

G. The EXCHANGE PARTNER agrees that the District Engineer, U.S. Army Engineer District, Savannah, Georgia, or any of his duly authorized representatives shall, until the expiration of three (3) years after acceptance of the construction of the (Replacement Facilities) by the Government, have access to and the right to examine any

books, documents, papers and records of the EXCHANGE PARTNER or its contractor(s) involving activities or transactions related to this Agreement and its attachments.

H. The PARTIES to this EXCHANGE AGREEMENT agree that the Chief of Real Estate, Savannah District, U.S. Army Corps of Engineers shall serve as the Contracting Officer for this Agreement with the authority and responsibility for rendering all decisions, issuing notices, and/or furnishing instructions on the behalf of the Government with regard to this Agreement when executed by the DEPUTY ASSISTANT SECRETARY OF THE ARMY, (INSTALLATIONS, HOUSING AND PARTNERSHIPS).

I. The EXCHANGE PARTNER shall hold the Government harmless from any costs, claims, damages, loss or other costs, including fines and penalties, arising out of this exchange.

J. The Government has provided notice of the proposed exchange to the US Congress, pursuant to Title 10, U.S. Code, Section 18240.

II. ACKNOWLEDGMENTS

A. Environmental Documentation. The environmental documentation includes, but is not limited to, the following: **(THE FOLLOWING PROVISIONS CAN BE MODIFIED TO FUTURE TENSE, HAVING THE EXCHANGE AGREEMENT SIGNED, BUT CONTINGENT ON SATISFACTORY COMPLETION OF ENVIRONMENTAL DOCUMENTATION, BUT MUST ADD SUGGESTED NULL AND VOID LANGUAGE IN MISCELLANEOUS PROVISIONS)**

1. Environmental Baseline Surveys. The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement, the Environmental Condition of Property Baseline Survey (ECP), ECP sampling and/or testing, completed by the Government per the Letter Agreement executed by the Government and the Exchange Partner dated _____, 20__ (Letter Agreement), for the Government Property. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit E**. (Does this provision conflict with prior NOA conditions on when ENV will be completed?)

2. Finding of Suitability to Transfer. The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement, the Finding of Suitability to Transfer (FOST) for the Government Property, completed by the Government per the Letter Agreement. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit F**.

3. Environmental Assessment. The EXCHANGE PARTNER and the Government acknowledge and accept, for the purpose of use with this Agreement, the Environmental Assessment (EA) completed by the Government for the Government Property. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit G**.

4. Finding of No Significant Impact. The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement, the Finding of No Significant Impact (FNSI), completed by the Government per the Letter Agreement, for the Government Property. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit G**.

5. Environmental Impact Statement. The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement, the Environmental Impact Statement (EIS), completed by the Government per the Letter Agreement, for the Government Property. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit H**.

B. Land Surveys and Legal Descriptions. The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement, the survey and legal description completed by the Government per the Letter Agreement, for the Government Property. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibits D & C**.

C. National Historic Preservation Act (NHPA). The EXCHANGE PARTNER and the Government acknowledge and accept for the purpose of use with this Agreement the NHPA documentation completed by the Government per the Letter Agreement. The EXCHANGE PARTNER acknowledges receiving a copy of same, **Exhibit I**.

D. To the extent that the EXCHANGE PARTNER agrees to remediate the Government property for the future intended use, the EXCHANGE PARTNER agrees to provide in each contract for remediation, a provision that the contractor will indemnify and hold harmless the Government from any costs, claims, damages, loss or other costs, including fines and penalties, arising out of such investigation and remediation actions.

III. OBLIGATIONS OF THE EXCHANGE PARTNER

A. EXCHANGE PARTNER shall provide Replacement Facilities satisfactory to the Government, in its sole discretion. The value of the Replacement Facilities to be provided to the Government shall be at least equal to the fair market value of the Government property to be conveyed.

B. EXCHANGE PARTNER shall reimburse the Government for all administrative costs and all costs of whatever kind or nature, contemplated or not, associated with the execution of this Agreement or in the fulfillment of its obligations under this Agreement, whether or not they are otherwise specifically provided for herein, as set forth in the Letter Agreement executed by the Exchange Partner dated _____, 20____ (Letter Agreement). This Agreement shall not merge into any subsequent agreement between the Parties, including the Letter Agreement and documents related thereto.

C. EXCHANGE PARTNER has executed the Letter Agreement to reimburse USAED Savannah for estimated administrative costs associated with the transaction, including but not limited to costs related to negotiation and review of this Agreement, engineering services, environmental surveys work and real estate actions such as all associated survey, recording, escrow, and closing fees (**EXHIBIT J**). Exchange Partner acknowledges that if the estimated costs under this LA are later forecasted to exceed the amount of funds available under the LA, it shall provide the additional funds within 30 days of notice by the Government to preclude direct termination of the work under this LA.

D. EXCHANGE PARTNER shall obtain all necessary permits, licenses, services, and any and all approvals, at its own risk and expense, to accomplish the construction work under this section. This includes applying for and satisfying all requirements for a license or construction permit on Government Property as required in Federal (including Army) regulations. EXCHANGE PARTNER shall own and be responsible for all materials, equipment and personnel used in conjunction with the construction on Government property until such time as ownership is conveyed in accordance with this Agreement. Construction shall conform to all applicable local, state and Government standards. Approval of EXCHANGE PARTNER's draft Design Narrative and final Construction Documents (schedules, plans, drawings, specifications and permits to construct) will not constitute Government's acceptance of risk of or responsibility for such conformance unless explicitly included in this document. (**LIST ANY KNOWN PERMITS, OTHER OUTSTANDING ISSUES**)

E. The rights and obligations of EXCHANGE PARTNER in the contract(s), including all attachments thereto, to construct a Replacement Facility suitable to the Government's needs, shall be deemed to be incorporated in this Agreement when fully executed between EXCHANGE PARTNER and their obligors and all benefits, rights, title and interest in said contract or contracts shall inure to the benefit of the Government. Said agreement shall provide that the improvements for said Replacement Facility shall be completed no later than _____ days after the execution date of this Agreement. Said time shall be expressed in the construction contract as a certain day based on these time lines and shall provide that time is of the essence. (**EXHIBIT O**)

F. The EXCHANGE PARTNER shall prepare all Construction Documents. The Government in its sole discretion will approve in writing all Construction Documents prior to their incorporation in the EXCHANGE PARTNER's contract for construction. Further, at all times during and after construction, the Government shall have the right to enter upon the premises, from time to time, to determine compliance with said final Construction Documents, with the intent that the facilities will be constructed in a manner which complies with the standards of the Government regarding such, in order to allow the Government to accept such structures as hereinafter provided. Further, EXCHANGE PARTNER shall furnish any change or modification to the final Construction Documents to the Government in writing, and obtain written Government approval prior to commencement of construction.

G. The EXCHANGE PARTNER shall execute the Construction Monitoring Letter Agreement(s) simultaneously with this Agreement, provide the Government with funds sufficient to cover administrative costs associated with the construction of the Replacement Facilities, including but not limited to, the design and construction monitoring, as set forth in the Construction Monitoring Letter Agreement, **Exhibit K**.

H. Warranties

1. EXCHANGE PARTNER shall, after completion of all improvements to the land, and in addition to any other warranties set forth elsewhere in this Agreement, furnish the Government a one (1) year warranty that the work performed and facilities built, materials and equipment installed by EXCHANGE PARTNER, its contractor(s), its sub-contractors(s), or supplier(s) performing work on said project at the request of EXCHANGE PARTNER, conforms to the final Construction Documents and overall design of said project. This warranty shall continue for a period of one (1) year from the date of the Government's final acceptance of the work. The Contracting Officer will notify the EXCHANGE PARTNER in writing, within thirty (30) days of discovery of any failure, damage or defect in equipment or material furnished. If EXCHANGE PARTNER fails to remedy any failure, damage or defect within thirty (30) days after receipt of said notice, the Government shall have the right to repair, replace or otherwise remedy the failure, defect damage, and the EXCHANGE PARTNER shall reimburse the Government within thirty (30) days of said repairs or replacements.

2. The EXCHANGE PARTNER shall remedy at the EXCHANGE PARTNER'S expense any failure to conform, or any defect. In addition, the EXCHANGE PARTNER shall remedy at the EXCHANGE PARTNER'S expense any damage to Government-owned or controlled real or personal property, when that damage is the result of (a) the EXCHANGE PARTNER'S, its contractor(s), or subcontractor(s) failure to conform to the final Construction Documents as set forth herein or (b) any defect of equipment, material or workmanship furnished by the EXCHANGE PARTNER, its contractor(s) or subcontractor(s).

3. The EXCHANGE PARTNER shall restore any real property damaged in fulfilling the terms and conditions of the warranties set forth herein.

4. The EXCHANGE PARTNER'S warranty with respect to repairs shall run for one (1) year from the date of repair or replacement.

5. The warranties set forth herein shall not limit any Government rights, including, but not limited to, latent defects, gross mistake or fraud.

6. The Government's monitoring does not relieve the EXCHANGE PARTNER from the requirements set forth in the final Construction Documents, and the Government's acceptance of said construction does not constitute acknowledgement or acceptance of any item(s) of the construction that do not conform to the final Construction Documents without the Government's written authorization as stated in Paragraph G of this section.

I. Final Acceptance

Final acceptance by the Government will be given in writing and determined by the following:

1. Completion of construction, as determined in the sole discretion of the Government;
2. Upon completion of construction the EXCHANGE PARTNER shall furnish to the Government six (6) bound copies of the Operator manuals to systems installed in, on or around said structure of the mechanical and electrical system operation and maintenance (O&M) manuals. The manuals shall be loose binder format, indexed, and clearly divided by technical sections. The manuals shall list the name, phone numbers and addresses of all manufacturers' points of contact. In addition, the manuals shall include manufacturer's standard product brochures, schematics, printed instructions, general operating procedures, and safety precautions. Additionally, the manuals shall outline step-by-step procedures required for system startup, operation, adjustment, preventive maintenance, inspection and testing. The O&M manual requirements must be provided prior to the building certification and will become a qualifying part of the punch list. Building or mechanical acceptance cannot be accomplished until this requirement is satisfied.
3. Upon delivery by the EXCHANGE PARTNER and acceptance by the Government of the original marked up final Construction Documents showing "as-built" conditions with three (3) hard copy sets and three (3) sets on CD of the same.
4. These items will be furnished by the EXCHANGE PARTNER to the Government, prior to final acceptance, at the address listed in Article VII, paragraph I, below.

J. Further, EXCHANGE PARTNER shall furnish to the Government, before transfer of title to the improvements to the Government, all operator manuals supplied by the manufacturer, to any system installed in, on or around said structure.

K. EXCHANGE PARTNER hereby assigns to the Government any warranties given to EXCHANGE PARTNER by its contractor(s) or its subcontractor(s).

L. EXCHANGE PARTNER shall, before transfer of title to the property and its improvements to the Government, furnish the Government one complete set of original marked up final Construction Documents showing "as-built" conditions.

M. Prior to the commencement of construction of the Replacement Facility, EXCHANGE PARTNER shall require each contractor to furnish it with a certificate of insurance, naming the Government as an additional insured, with minimum limits of bodily injury and property damage as follows:

1. \$300,000 for each individual;
2. \$1,500,000 for each incident involving bodily injury;
3. \$500,000 aggregate for all property damage that may be incurred during the term of the policy;
4. \$1,500,000 comprehensive general liability umbrella;
5. \$3,000,000 builder's risk insurance.

Prior to construction, the EXCHANGE PARTNER shall furnish the certificate of insurance to the Government. The EXCHANGE PARTNER must maintain all insurance coverage, without any lapse in service, at all times during construction of the Replacement Facility and shall provide copies of each certificate of insurance to the Government.

N. The EXCHANGE PARTNER shall provide, at its expense, utility line connections, replacement or relocations of existing utilities and pay any and all tapping and connection fees related thereto. Utility services shall experience no lapse in service.

O. The EXCHANGE PARTNER shall be responsible for all costs, to include all costs to the Government, of whatever kind or nature, contemplated or not, associated with this Agreement, whether or not they are otherwise specifically provided for herein.

P. The Government shall at its sole discretion determine whether the facilities are acceptable for the operation of an AMSA under the guidelines provided by Federal law and Army regulations. However, the Government's acceptance of the improvements shall not be unreasonably withheld.

Q. The EXCHANGE PARTNER shall, within sixty (60) days of acceptance of the Replacement Facility by the Government, convey, by Bill of Sale, preliminary, not final, draft of which is attached as **Exhibit L**, EXCHANGE PARTNER's interest to the Replacement Facility, with all improvements, free and clear of all encumbrances and special assessments which are a lien against said improvements. EXCHANGE PARTNER acknowledges the attached Exhibit is a preliminary draft and is subject to change to accommodate changes including, but not limited to, changes in local, state or federal standards/Government standards. This preliminary draft may be modified based on issues that may arise, including, but not limited to, the outcome of all environmental analyses and studies, including the NEPA process. The delivery of the Quitclaim Deed to the EXCHANGE PARTNER for the Government property and acceptance of the conveyance of the EXCHANGE PARTNER property, shall be deemed full performance by the Government of its obligations hereunder with regard to the Government property conveyed thereby, except for the continuing obligation of the Government provided for in the deed of conveyance, and as may be specifically provided for in this Agreement. The EXCHANGE PARTNER shall remain liable for all losses and damages to the Private property not yet

conveyed to the Government hereunder, and for all damages or injuries to persons or property occurring thereon or related thereto (except as may be caused by the negligence or willful misconduct of the Government or its agents), prior to the conveyance of said property to the Government hereunder.

R. EXCHANGE PARTNER shall coordinate with the Government in completing a real property accountability form, DD1354 - Transfer and Acceptance of Military Real Property, in the format required. The EXCHANGE PARTNER shall furnish a draft of the document to the Government, upon transfer of title to the improvements, which will then be reviewed and finalized for final approval and execution by the Government.

S. EXCHANGE PARTNER shall provide a statement of constructability which provides that the construction site is adequate for the construction of the Replacement Facilities.

IV. OBLIGATIONS OF THE GOVERNMENT

A. The Government will provide the EXCHANGE PARTNER with access to all historical and environmental data for the Government Property consistent with applicable law and regulation. If any such data has been marked as "For Official Use Only," the Commander, 88th Regional Support Command or his or her delegate will coordinate with the appropriate record custodian for release to EXCHANGE PARTNER for use related to this Agreement. EXCHANGE PARTNER agrees that, to the extent permitted by STATE law, use of any such data will be used solely for the purposes of this exchange action and that no data will be disclosed outside of EXCHANGE PARTNER or its environmental contractors, or consultants, if any, without the express written permission of the 88th Regional Support Command's Record Custodian.

B. The Government has provided all environmental analyses and documentation necessary for the exchange of the properties, at the EXCHANGE PARTNER's expense as set forth in the Letter Agreement. (OR WILL PROVIDE, satisfactorily to the Government, prior to conveyance of the Government Property).

C. The Government has provided the ECP for the Government Property.

D. The Government has provided the FOST for the Government property.

E. The Government has provided the EA, FNSI (or EIS and ROD, if applicable) for the exchange of the Government property, at the EXCHANGE PARTNER's expense as set forth in the Letter Agreement (OR WILL PROVIDE, as required and satisfactorily to the Government, prior to conveyance of the Government Property).

F. The Government has acquired a plat, survey, and legal description of the Government owned exchange parcel of land suitable for recordation in the local land records as required by (State) law.

G. The Government has provided all consultation on behalf of the Government required under Section 106, NHPA, as implemented in 36 C.F.R. Section 800, at the Exchange Partner's expense as set forth in the Letter Agreement. (OR WILL PROVIDE, as required and satisfactorily to the Government, prior to conveyance of the Government Property).

H. The Government will reasonably approve all engineering and environmental reviews/analysis and required real estate documents related to this exchange.

I. The Government will conduct all NEPA reviews and execute Records of Environmental Consideration for any NEPA Categorical Exclusions, if necessary. If the Government determines that an EA is required for either of these actions, it will notify EXCHANGE PARTNER as soon as is practicable after making such determination.

J. The Government will not unreasonably delay acceptance of the construction of the Replacement Facility because of incidental items of a minor nature which remain to be completed and which would not unduly delay occupancy and use of such facility for the purpose for which it is intended, unless items specified in paragraph III.K. have not been furnished.

K. The Government will, within sixty (60) days of acceptance of the construction of the Replacement Facilities by the Government, convey by Quitclaim Deed, preliminary, not final, draft of which is attached as **Exhibit M**, the Government's interest to the 4.41 acres, more or less, subject to existing easement(s) for public roads and highways, utilities, railroads and pipelines. The EXCHANGE PARTNER acknowledges the attached Exhibit is a preliminary draft and is subject to change to accommodate changes, including, but not limited to, changes in local, state or federal standards. This preliminary draft may be modified based on issues that may arise, including, but not limited to, the outcome of all environmental analyses and studies, including the NEPA process. Upon conveyance of the E. Earle Rives USARC to the EXCHANGE PARTNER as provided herein, the Government shall have no responsibility for the provision of police, fire, emergency medical services, trash pick-up, road maintenance, utility services or any other maintenance or other municipal type services to said property.

L. All of the Government property is conveyed under this Agreement in an "as is," "where is," condition, without any representation or warranty whatsoever by the Government or its agents concerning the state of repair or condition of said property, except as may otherwise be specifically provided hereunder or within the deed of conveyance.

V. MUTUAL OBLIGATIONS

A. The Quitclaim Deed/Bill of Sale shall be exchanged contemporaneously, after the Government has provided final acceptance of the Bill of Sale and all supporting documentation as referenced in III.K.2 and 3 herein.

B. Satisfactory Completion of Environmental Work by the Government. All obligations of the Government under this Exchange Agreement are subject to, and conditioned upon, the satisfactory completion (at the Government's sole discretion) of all environmental documentation required to convey the Government Property. If any item is not satisfactorily completed, this agreement shall be null and void. [ONLY USE THIS PARAGRAPH IF EXCHANGE AGREEMENT IS TO BE EXECUTED PRIOR TO COMPLETION OF ENVIRONMENTAL]

C. The Parties agree to immediately notify each other of any significant change in community sentiment or opposition to the proposed exchange by local, state or Federal Government officials.

D. Should retrocession of legislative jurisdiction be required for the property to be conveyed by the Government, both parties agree to make all efforts necessary to effectuate such retrocession, at the Exchange Partner's expense as set forth in the Letter Agreement.

E. The EXCHANGE PARTNER, its contractors, and subcontractors shall comply with the requirements of the Davis-Bacon Act, Federal Acquisition Regulation (FAR) Section 52.222-6.

F. The Government will issue to EXCHANGE PARTNER a Right of Entry, **Exhibit N**, for construction of the Replacement Facility on the Charlotte USARC. Concurrently and inclusive with the Exchange Agreement, the Exchange Partner shall enter into a Construction Monitoring Letter Agreement (CMLA) with USACE (**see draft at Appendix 5**). The Right of Entry will provide EXCHANGE PARTNER, its contractors, its sub-contractors, or any other entity performing work on the Replacement Facility, all required access to Charlotte USARC for the purposes of constructing the Replacement Facility.

VI. DISPUTES

A. This contract is subject to the Contract Disputes Act of 1978, 41 U.S.C. 7101-7109 et seq., as amended. Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

B. "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract.

C. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the EXCHANGE PARTNER seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by the following paragraph. A voucher, invoice or other routine

request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this clause, if it is disputed either as to a liability or amount or is not acted upon in a reasonable time.

D. A claim by the EXCHANGE PARTNER shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the EXCHANGE PARTNER shall be subject to a written decision by the Contracting Officer. For EXCHANGE PARTNER claims exceeding \$100,000, the EXCHANGE PARTNER shall submit with the claim a certification that the claim is made in good faith, supporting data are accurate and complete to the best of the EXCHANGE PARTNER's knowledge and belief and the amount requested accurately reflects the contract adjustment for which the EXCHANGE PARTNER believes the Government is liable.

E. If the EXCHANGE PARTNER is an individual, the individual shall execute the certification. If the EXCHANGE PARTNER is not an individual, the certification shall be executed by a senior company official in charge at the EXCHANGE PARTNER's plant or location involved or an officer or general partner of the EXCHANGE PARTNER having overall responsibility for the conduct of the EXCHANGE PARTNER's affairs.

F. For the EXCHANGE PARTNER claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the EXCHANGE PARTNER, render a decision within 60 days of the request. For EXCHANGE PARTNER certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the EXCHANGE PARTNER of the date of which the decisions will be made.

G. The Contracting Officer's decision shall be final unless the EXCHANGE PARTNER appeals or files a suit as provided in the Act.

H. The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Office receives the claim (property certified if required) or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6 month period as fixed by the Treasury Secretary during the pendency of the claim.

I. The EXCHANGE PARTNER shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal or action arising under the contract and comply with any decision of the Contracting Officer, U.S. Army Engineer District, Savannah, Georgia.

J. Notwithstanding any other provision of the Contract Disputes Act of 1978, as amended, the EXCHANGE PARTNER and the Contracting Officer, U.S. Army Engineer District, Savannah, Georgia, may use any alternative means of dispute resolution under 5 USC 571, or other mutually agreeable procedures, for resolving claims. The EXCHANGE

PARTNER shall certify the claim when required to do so as provided under this Act or as otherwise required by law. All provisions of 5 USC 58 et seq shall apply to such alternative means of dispute resolution.

VII. MISCELLANEOUS PROVISIONS

A. This Agreement incorporates and includes all prior negotiations and agreements, except the Letter Agreement (**EXHIBIT K**), applicable to the matters contained herein. The parties agree that this Agreement constitutes the entire understanding between the parties and supersedes previous representations whether written or oral and any other written or oral agreement between the parties.

B. This Agreement may be amended only by written mutual consent of the parties to this Agreement.

C. This transaction requires that the Government will receive a Replacement Facility that is equal to or greater than the value of the existing land and facilities located at the E. Earle Rives US Army Reserve Center 1120 North Church Street, Greensboro, NC.

D. Nothing contained in this Agreement will make or will be construed to make the parties hereto partners or joint venture with each other nor be construed to render either of the parties hereto liable to any third party for debts or obligations of the other party hereto.

E. The failure of either party to insist upon strict performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or a relinquishment of that party's rights to future performance of any such term(s), covenants, or conditions by the other party.

F. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, will include all other genders.

G. The EXCHANGE PARTNER may not transfer or assign its rights and interests in and under this Agreement without the written consent of the Government. The covenants, agreements, rights, and responsibilities contained in this Agreement inure to the benefit of and are binding upon the parties hereto, their successors, and assigns. Nothing in this Agreement shall be construed as creating any rights of enforcement against any persons or entities that are not a party hereto, nor shall this agreement be construed as creating any rights, interest, or third party beneficiary status for any persons or entities not a signatory to this Agreement.

H. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void then both parties shall be relieved of any obligations under that provision. Notwithstanding such a finding, this Agreement shall remain in full force and

effect and be binding on the parties hereto as to the remaining terms to the fullest extent permitted by law.

I. Notices. A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and, (1) in the case of the Government, is addressed to:

U.S. Army Corps of Engineers, Savannah District
Attn: Chief, Real Estate Division
100 W. Oglethorpe Avenue
Savannah, GA 31401

and, (2) in the case of the EXCHANGE PARTNER, is addressed to:

or such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other party as provided in this Section.

VIII. ANTI-DEFICIENCY ACT

Should it be construed that the Government shall have been obligated under this Agreement to pay or reimburse any money hereunder, nothing in this Agreement shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, as amended, 31 U.S.C. §1341.

IX. EFFECTIVE DATE

The effective date of this Agreement shall be the date on which this Agreement is signed by the Deputy Assistant Secretary of the Army (Installations & Housing).

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date subscribed opposite their respective names.

EXCHANGE PARTNER, CITY, STATE

Date

BY: _____
(TYPED NAME)

TITLE: _____

**UNITED STATES OF AMERICA
DEPARTMENT OF THE ARMY**

Date

BY: _____
Deputy Assistant Secretary of Army
(Installations and Housing) DASA (I&H)

“BELOW ARE THE RECOMMENDED EXHIBITS FOR EACH EXCHANGE
AGREEMENT”

(SAMPLE LIST) **EXHIBITS**

EXHIBIT A - DD 1391

EXHIBIT B - DESIGN NARRATIVE

EXHIBIT C - GOVERNMENT PROPERTY - LEGAL DESCRIPTION: E. Earle Rives
US Army Reserve Center, 1120 North Church Street, Greensboro, NC

EXHIBIT D – SURVEY – GOVERNMENT PROPERTY

EXHIBIT E - ECP

EXHIBIT F - FOST

EXHIBIT G - EA FNSI

EXHIBIT H – EIS/ROD (if applicable)

EXHIBIT I – NHPA

EXHIBIT J - LETTER AGREEMENT (*Draft Format*)

EXHIBIT K - LETTER AGREEMENT FOR CONSTRUCTION MONITORING (*Draft
Format*)

EXHIBIT L - DRAFT BILL OF SALE (*Draft Format*)

EXHIBIT M - DRAFT QUITCLAIM DEED (*Draft Format*)

EXHIBIT N - RIGHT OF ENTRY FOR CONSTRUCTION OF REPLACEMENT
FACILITY (*Draft Format*)

EXHIBIT O - CONSTRUCTION SCHEDULE

EXHIBIT A

DD 1391

(See Appendix 2 of NOA.)

EXHIBIT B

DESIGN NARATIVE

(To be provided by Exchange Partner prior to entering into Exchange Agreement.)

EXHIBIT C

GOVERNMENT PROPERTY–LEGAL DESCRIPTION

(To be provided by the Government prior to entering into the Exchange Agreement.)

EXHIBIT D

SURVEY – GOVERNMENT PROPERTY

(To be provided by the Government prior to entering into the Exchange Agreement.)

EXHIBIT E

ECP

<http://www.sas.usace.army.mil/re/acquisitions.html>

EXHIBIT F

FOST

(To be provided by the Government prior to entering into the Exchange Agreement.)

EXHIBIT G

EA / FNSI

(To be provided by the Government prior to entering into the Exchange Agreement.)

EXHIBIT H

EIS/ROD (if applicable)

(To be provided by the Government prior to entering into the Exchange Agreement.)

EXHIBIT I

NHPA

(If required, to be provided by the Government prior to entering into the Exchange Agreement.)

EXHIBIT J

LETTER AGREEMENT

(See Appendix 5 of NOA.)

(To be provided by the Government prior to entering into the Exchange Agreement.)

EXHIBIT K

**CONSTRUCTION MONITORING
LETTER AGREEMENT**

(See Appendix 6 of NOA.)

EXHIBIT L

DRAFT BILL OF SALE

For good and valuable consideration, receipt of which is hereby acknowledged, {Exchange Partner}, Seller (“Exchange Partner”), does hereby grant, bargain, sell, release, and transfer to the Government, Buyer (“Government”), and Government hereby agrees to take ownership of the following described items of property, to have and to hold the same unto Government, its successors and assigns forever:

REVISE BELOW FOR INFRASTRUCTURE WORDING?????

{Description of Construction: A _____ which consists of _____ square feet, three bay masonry, plaster, and steel structure, constructed on Government owned property located at _____.

Exchange Partner shall, after completion of construction and delivery of the Operating Manuals for the _____, and in addition to any other warranties set forth elsewhere in this Bill of Sale or the Exchange Agreement executed by the Exchange Partner and Government on _____ {date}, furnish the Government a 1-year warranty that the work performed and facilities built, materials and equipment installed, by its contractor, its sub-contractors, Exchange Partner or any other entity performing work on said project at the request of Exchange Partner conforms to the final Construction Documents and overall design of said project.

Exchange Partner hereby assigns to the Government any warranties given to Exchange Partner by its contractor(s) or its subcontractor(s).

In addition to any other warranties in this Bill of Sale or the Exchange Agreement, the Exchange Partner warrants that work performed, pursuant to the Exchange Agreement, conforms to the final Construction Documents as identified in the Exchange Agreement, and is free of any defect in equipment or material furnished, or workmanship performed by the Exchange Partner or any contractor or supplier for a period contemporaneous with the aforementioned 1-year warranty.

During the 1-year warranty period, the Contracting Officer will notify the Exchange Partner, in writing, within thirty (30) days the discovery of any failure or defect in equipment or material furnished. If Exchange Partner fails to remedy any failure or defect within thirty (30) days after receipt of said notice, or during a reasonable period if the failure or defect is not susceptible to remediation within thirty (30) days, the Government shall have the right to replace, repair, or otherwise remedy the failure or defect at Exchange Partner’s expense.

IN WITNESS WHEREOF, the Exchange Partner and Government have caused this instrument to be executed by their duly authorized officers on the dates set forth below.

EXCHANGE PARTNER

By: _____

Name

Title

Date: _____

UNITED STATES OF AMERICA

DEPARTMENT OF THE ARMY

By: _____

Title:

Date: _____

EXHIBIT M

WHEN RECORDED RETURN TO: **U. S. ARMY CORPS OF ENGINEERS**
 SAVANNAH DISTRICT
 ATTN: Chief, Real Estate Division
 100 W. Oglethorpe Ave
 Savannah, GA 31401

QUITCLAIM DEED

THIS QUITCLAIM DEED, made and entered into between the **UNITED STATES OF AMERICA**, hereinafter referred to as **GRANTOR**, acting by and through the Deputy Assistant Secretary of the Army (I&H), pursuant to a delegation of authority from the SECRETARY OF THE ARMY, under and pursuant to the power and authority contained in United States Code Title 10 Section 18240, as amended, and in furtherance of the Exchange Agreement dated _____ (“Exchange Agreement”), and EXCHANGE PARTNER, hereinafter referred to as the **GRANTEE**.

WITNESSETH: That the **GRANTOR** for and in consideration of (REAL PROPERTY/DESCRIBE COSTRUCTION), the covenants and conditions contained herein, and other good and valuable consideration, in hand paid, the receipt of all of which is hereby acknowledged, does hereby convey, REMISE, RELEASE and forever QUITCLAIM, unto the **GRANTEE**, its successors and to its assigns, all its right, title and interest in and to the following described property situated in _____, State of _____, hereinafter referred to as the Property:

[LEGAL DESCRIPTION]

The Grantor further conveys and quitclaims, for the same consideration, all right, title or interest which the Grantor may have in the banks, beds, and waters of any streams bordering upon said land, and in any alleys, roads, streets, ways, strips, gores, or railroad rights-of-way abutting or adjoining said land and in any means of ingress or egress appurtenant thereto.

It being the intent of the foregoing description to include all of those lands acquired by the United States of America by Warranty Deed from _____, filed for record (date) and recorded in Book No. _____ Page _____ of the records of the Recorder's office _____ County, _____.

1. CONDITION OF PROPERTY

It is understood and agreed the Property is conveyed "As Is" and "Where Is" without any representation, warranty, or guarantee as to quantity, quality, character, condition, size, or kind, or that the same is in condition or fit to be used for the purposes intended. There is no obligation on the part of the GRANTOR to make any alterations, repairs or additions, and said GRANTOR shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law. The GRANTEE acknowledges that the GRANTOR has made no representation or warranty concerning the condition and state of any appurtenances on the Property.

2. EASEMENTS, LICENSES AND PERMITS

The Property is conveyed subject to all general and special taxes, penalties, interest, assessments, collection fees lawfully accrued and unpaid, if any; and subject to any and all existing reservations, easements, restrictions, and rights, recorded and unrecorded, for private and public roads, highways, streets, pipelines, railroads, utilities, water lines, sewer mains and lines, storm sewers and drains, power lines, and any other rights of way, including but not limited to any specific easements, restrictions, reservations rights or covenants described herein.

3. CERCLA NOTICE, COVENANTS AND ACCESS

(fill in pursuant to FOST)

4. ENVIRONMENTAL PROTECTION PROVISIONS

(fill in pursuant to FOST)

5. NON-DISCRIMINATION

With respect to activities related to the property, the Grantee hereby agrees that it will comply with the requirements of Title VI of the Civil Rights Act of 1964 (Public Law No. 88-352) and all requirements imposed by or pursuant to the regulations issued pursuant to the Act and now in effect, to the end that, in accordance with said Act and regulations, no person in the United States shall, on the ground of race, color, national origin, sex, or handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity related to the property of the GRANTEE, its successors or assigns.

6. ANTI-DEFICIENCY ACT

The GRANTOR'S obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this deed shall be interpreted to require obligations or payment by the GRANTOR in violation of the Anti-Deficiency Act.

7. NOTICES

Any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by mail, postage prepaid, addressed as follows:

GRANTOR:

GRANTEE:

USAED, Savannah
ATTN: CESAS-RE-A (Bruce)
100 W. Oglethorpe Ave
Savannah, GA 31401

TO HAVE AND TO HOLD the said premises, unto the said GRANTEE, its successors and assigns, forever, subject to the covenants and conditions herein set forth.

The provisions of 10 U.S.C. Section 18233a have been complied with.

IN TESTIMONY WHEREOF, witness the GRANTOR has caused this Deed to be executed in its name by the Secretary of the Army and the seal of the Department of the Army to be hereunto affixed this _____ day of _____, 20__.

BY: _____
SECRETARY OF THE ARMY

ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA)
) SS:
COUNTY OF ARLINGTON)

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, do certify that, on the day shown above, personally appeared before me in the Commonwealth of Virginia, County of Arlington, (Secretary of the Army's Name), Secretary of the Army, personally known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the forgoing document, who acknowledged that the signature on the document was voluntarily affixed by him for the purposes therein, on this date, and acknowledged the same for and on behalf of the UNITED STATES OF AMERICA.

Notary Public

Notary Registration No. _____

My Commission Expires: _____

ACCEPTANCE

EXCHANGE PARTNER and its successors hereby accepts this Quitclaim Deed for itself, its successors and assigns, subject to all of the conditions, reservations, restrictions and terms contained therein.

IN WITNESS WHEREOF, EXCHANGE PARTNER has caused these presents to be executed by its governing body and is within the scope of its legal powers.

EXCHANGE PARTNER

By: _____,
Title

Date: _____

STATE OF _____)
):
COUNTY OF _____):

On this _____ day of _____, 20__, before me, a Notary Public in and for said County and State, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed same for and on behalf of the County of _____.

WITNESS my hand and official seal.

NOTARY PUBLIC

My commission expires:

EXHIBIT N

INSTALLATION NAME

DEPARTMENT OF THE ARMY

RIGHT OF ENTRY FOR CONSTRUCTION

THE UNITED STATES OF AMERICA (the "GRANTOR"), acting by and through the Deputy Assistant Secretary of the Army (IH&P) pursuant to a delegation of authority from the SECRETARY OF THE ARMY (the "Army"), hereby grants to COMPANY NAME, hereinafter referred to as the ("GRANTEE"), a Right of Entry for Construction ("Right of Entry") for the purpose of construction of _____ and any other improvements to the Government's property as set forth in the Exchange Agreement dated _____ between the Grantee and Grantor, over, across, in and upon lands of the United States, as identified in **Exhibit "A"** which is attached hereto and made a part hereof, and all hereinafter referred to as the premises.

This Right-of-Entry is subject to the following terms and conditions:

1. TERM

This Right-of Entry is granted for a term of ____ year(s), beginning ____ 20__, and ending ____ 200__, but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this Right-of-Entry shall be the mutual benefit to be derived by the parties hereto under the terms and conditions of the Exchange Agreement referenced in the granting clause hereof.

3. NOTICES

All notices and correspondence to be given pursuant to this Right-of-Entry shall be addressed, if to the Grantee, to _____; and if to the Grantor, to the District Engineer, Attn: Chief, Real Estate Division, P.O. Box 889, Savannah, Georgia 31402-0889; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Installation Commander", shall include their duly authorized representatives. Any reference to "Grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE INSTALLATION COMMANDER

The use and occupation of the premises shall be subject to the general supervision and approval (which approval shall not be unreasonably withheld) of the Installation Commander hereinafter referred to as said officer, and to such rules and regulations as may reasonably be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

- a. without cost or expense to the United States;
- b. subject to the right of the United States to improve, use or maintain the premises;
- c. subject to other outgrants of the United States on the premises; and
- d. personal to the Grantee, and this Right of Entry, or any interest therein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The Grantee acknowledges for the limited purposes of this Right of Entry, that it has inspected the premises, is generally familiar with its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States except as otherwise provided by law.

9. COST OF UTILITIES

The Grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Grantee, including the Grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The Grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Grantee. The Grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the Grantee, its contractor(s) and its subcontractors under this Right-of-Entry, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee, its contractor(s) or subcontractor(s) incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition reasonably satisfactory to said officer, or at the election of said officer, reimbursement made therefore by the Grantee in an amount necessary to restore or replace the property to a condition reasonably satisfactory to said officer.

11. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Grantee, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. RESTORATION

In the event this Right-of-Entry expires, is revoked or terminated pursuant to the terms hereof, the Grantee shall vacate the premises, remove the property of the Grantee, and restore the premises to a condition reasonably satisfactory to said officer. Thereafter, if the Grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefore, or said officer may cause the property to be removed and no claim for damages against the United States. The Grantee shall also pay the United States on demand any sum which may reasonably be expended by the United States after the expiration, revocation, or termination of this Right-of-Entry in restoring the premises.

13. NON-DISCRIMINATION

The Grantee shall not discriminate against any person or persons or exclude them from participation in the Grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The Grantee will comply with the Americans with Disabilities Act and Attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

14. TERMINATION

This Right-of-Entry may be terminated by the Grantor upon ten (10) days written notice.

15. ENVIRONMENTAL PROTECTION

a. The Grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this Right-of-Entry. The Grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Grantee's, its contractor(s), subcontractor(s) activities, and the Grantee shall be liable to restore the damaged resources.

c. The Grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

d. In the event of discovery of any environmental hazard on the premises, the Grantee will immediately report the particulars of such hazard to said officer. Additionally, Grantee will provide said officer with copies of applicable environmental permits and hazardous waste disposal documents.

16. HISTORIC PRESERVATION

The Grantee, its contractor(s), subcontractor(s) shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. INSURANCE

a. Prior to the commencement of construction of the _____, EXCHANGE PARTNER shall require the _____ contractor, respectively, to furnish it with a certificate of insurance, naming the Government as an additionally insured, with minimum limits of bodily injury and property damage as follows:

- (1) \$300,000 for each individual;
- (2) \$1,500,000 for each incident involving bodily injury;
- (3) \$500,000 aggregate for all property damage that may be incurred during the term of the policy;
- (4) \$1,500,000 comprehensive general liability umbrella;
- (5) \$3,000,000 builder's risk insurance.

This coverage may be cancelled or automatically expire at such time as the terms and conditions of the Exchange Agreement are fulfilled.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Grantee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Grantee does not have the required insurance coverage.

SITE SPECIFIC CONDITIONS

18. The following activities are expressly prohibited unless otherwise authorized in the relevant and executed Exchange Agreement:

- a. drilling wells on the property;
- b. extracting soil borings from the property;
- c. discharging or discarding any materials, trash, waste (liquid or solid), or lab equipment on the property;
- d. interfering with or delaying Government contractors performing on-site activities; and
- e. entering areas of the property without appropriate training and protective personal equipment required by applicable law.

19. The Installation Commander or his designee has the right to stop work if he observes unsafe or inappropriate practices.

20. DISCLAIMER

This Right-of-Entry is effective only insofar as the rights of the United States in the premises are concerned; and the Grantee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises.

It is understood that the granting of this Right-of-Entry does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the water of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

21. This Right of Entry is issued in contemplation of the Real Estate Exchange as stated in the Exchange Agreement referenced herein.

THIS RIGHT-OF-ENTRY is not subject to Title 10, United States Code, Section 2662, as amended. This Right of Entry is part of the Exchange Agreement that was submitted and approved pursuant to Title 10, United States Code, Section 18233, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, 20__.

BY: _____
RALPH J. WERTHMANN
Chief, Real Estate Division
Savannah District, Corps of Engineer

THIS Right-of-Entry is also executed by the Grantee this _____ day of _____, 20__.

GRANTEE

BY: _____
TITLE: _____

EXHIBIT O

CONSTRUCTION SCHEDULE

(To be provided by Exchange Partner prior to entering into Exchange Agreement.)

Appendix 5

DRAFT

**CONSTRUCTION MONITORING
LETTER AGREEMENT
BETWEEN
THE UNITED STATES ARMY AND
(EXCHANGE PARTNER NAME)**

This Construction Monitoring Letter Agreement (CMLA) is made as of the _____ day of _____, 20____, by and between the United States of America, acting by and through the Department of the Army, U.S. Army Corps of Engineers (USACE), Savannah, and the (EXCHANGE PARTNER NAME), hereinafter also referred to as “Exchange Partner”.

WHEREAS, The Defense Authorization Act of 1998, Section 2813(a), codified at 10 United States Code 2695, authorizes Acceptance of funds to cover administrative expenses related to certain real property transactions, including exchanges of real property with a non-federal person or entity; and

WHEREAS, the exchange agreement for real property at the E. Earle Rives US Army Reserve Center, 1120 North Church Street, Greensboro, NC included the design and construction of facilities on Government property located at Charlotte USARC, NC, and will necessitate Government monitoring of the design, construction, and inspection (quality assurance) of these facilities.

Now Therefore:

1. PURPOSE AND INTENT

a. The Parties acknowledge that this CMLA is in furtherance of the conveyance of Government property pursuant to an Exchange Agreement, dated _____.

b. This CMLA is specifically and solely intended to address funding actions in support of design, construction, and inspection oversight of activities that are part of the Exchange Agreement, as required by law or regulation, so that the exchange will be accomplished at minimal cost to the U.S. Government.

c. The Parties intend that this CMLA constitute a legally binding contract, subject to the terms of the Exchange Agreement.

2. OBLIGATIONS OF THE PARTIES

a. In consideration of the services conducted or actions taken by the USAED, Savannah, the Exchange Partner is responsible for hiring an independent construction management firm to monitor the Exchange Partner's Contractor's activities. USAED, Savannah will evaluate and approve in writing the Exchange Partner's management firm's qualifications and scope of services. USAED, Savannah will also monitor the design and construction Quality Control processes to ensure that the appropriate processes are in place and functioning well.

This firm will retain oversight, relative to the Contractor's Quality Control program and be responsible for the daily on-site inspections and testing. The construction management firm will also be responsible for all contract administration activities associated with the design and construction of the projects. This includes, but is not limited to, approving and tracking the contractor's schedule, reviewing design and construction submittals, answering requests for information, approving pay estimates, processing contract modifications, providing field technical support, and providing the necessary written correspondence to the contractor. As soon as practicable, but not later than 30 days following execution of this LA by all parties, the Exchange Partner, will pay \$72,050.00 to the USAED, Savannah, as the estimated cost of the services being provided therein. If the USAED, Savannah's costs under this LA are later forecasted to exceed the amount of funds available under this LA, it shall promptly notify the Exchange Partner of the amount of additional funds required to accomplish the items listed in Attachment A. Within thirty (30) days of completing the work under this LA, the USAED, Savannah, shall conduct an accounting to determine the actual costs of the work. Within thirty (30) days of completion of this accounting, the USAED, Savannah, shall return to the Exchange Partner any funds advanced in excess of the actual costs as then known. Established Federal Government accounting procedures shall be used. Except as provided herein the amount of funds advanced by the Exchange Partner, under this LA, shall be nonrefundable.

b. Funds shall be payable to "Finance & Accounting Officer, Savannah District in the form of a Cashier's or Bank Certified Check and forwarded to the following address with a copy of this CMLA attached.

USACE, Savannah
Attn: CESAS-RE-A/Stephen Bruce
100 W. Oglethorpe Ave
Savannah, Georgia 31401

3. MODIFICATION OR TERMINATION OF AGREEMENT

a. Either party shall have the option to direct termination of work under this CMLA, subject to the Exchange Agreement, by giving written notice to all parties. Such notice shall specify the effective date of the termination of work, at least ten (10) days

before such effective date. Within thirty (30) days following the effective date of the termination of work USAED, Savannah, shall provide to the Exchange Partner a final accounting of the actual costs of the work by USAED, Savannah, and return to the Exchange Partner any funds advanced in excess of the actual costs as provided in Article 2.

b. This CMLA contains the entire agreement between the parties regarding funding the construction monitoring activities listed in Attachment "A" for the exchange of certain United States owned land at the E. Earle Rives US Army Reserve Center, 1120 North Church Street, Greensboro, NC, for Exchange Partner's real property in the form of improvements to be made at the Charlotte USARC, Charlotte, NC. Any revision of this CMLA shall be in writing and signed by the parties hereto. This Agreement shall not merge into any subsequent agreement between the Parties.

c. This CMLA shall be in effect as of the date executed by both parties and shall remain in effect until an exchange of property is completed or by written notice by a party to the other and after final accounting of funds under Article 2.a.

4. QUALITY ASSURANCE ACTIVITIES

The Corps of Engineers minimum oversight will be exercised to provide Government quality assurance in general accord with local jurisdiction practice for assuring code compliance and construction quality. All Corps of Engineers oversight activities will be coordinated with the Army Reserve. Such oversight will at a minimum consist of the following (the Government may elect to inspect construction progress on a periodic basis):

a. Approval of the final Construction Documents. Approval criteria shall rely upon compliance with the Army Reserve Real Property Exchange Criteria and Quality Standards. Government-specific requirements/specifications exceeding local and national codes may be waived at the option of the Government, except as required by law. Government representatives shall be invited to participate in all design review meetings and shall receive a minimum of four (4) copies of each design submittal. Government will be provided six (6) of as built drawings. The Final Design submittal shall include a draft DA Form 1354, Transfer and Acceptance construction, a sample of which the Government shall provide to the Exchange Partner.

The Government will visit the site periodically during construction for the purpose of providing Government quality assurance in accordance with the CMLA. The Government will notify the Exchange Partner within 72 hours of each visit of any exceptions taken to the work. The Government's review and acceptance of the construction does not relieve the Exchange Partner from responsibility for compliance with all requirements of the Exchange Agreement.

The Government will typically visit the site at the following points in the construction process. The Exchange Partner must notify the Government a minimum of two weeks in

advance when the project reaches these points to allow time for scheduling and making the visits.

1. Completion of all underground infrastructure and piping installation prior to backfilling of the trenching.
2. At a time when construction is essentially complete, for the purpose of preparing the Government punch list for completion of the work.
3. After completion of the Government punch list work, for the purpose of a final inspection of the work prior to acceptance of the replacement facility.
4. At a point nine (9) months after the replacement facility turnover, prior to expiration of Exchange Partner's one-year warranty period for the replacement facility.

5. LIMITATION OF LIABILITY

The Government's obligation to pay any money under this CMLA is subject to the availability of appropriated funds to the Department of Army, and nothing in this CMLA shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, as amended, 31 U.S.C. §1341, provided that the Government shall otherwise comply with all applicable statutory requirements and its obligations under the terms of this LA.

6. DISPUTES

a. This Agreement is subject to the Contract Disputes Act of 1978, 41 U.S.C. 601-613 et seq., as amended. Except as provided in the Act, all disputes arising under or relating to this Agreement shall be resolved under this Article.

b. "Claim," as used in this Article, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this Agreement.

c. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by Exchange Partner seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by the following paragraph. A voucher, invoice or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act by complying with the submission and certification requirements of this Article, if it is disputed either as to a liability or amount or is not acted upon in a reasonable time.

d. A claim by Exchange Partner shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against Exchange

Partner shall be subject to a written decision by the Contracting Officer. For Exchange Partner claims exceeding \$100,000 Exchange Partner shall submit with the claim a certification that the claim is made in good faith, supporting data are accurate and complete to the best of Exchange Partner's knowledge and belief and the amount requested accurately reflects the contract adjustment for which Exchange Partner believes the Government is liable.

e. If Exchange Partner is an individual, the individual shall execute the certification. If Exchange Partner is not an individual, the certification shall be executed by a senior company official in charge at Exchange Partner's plant or location involved or an officer or general partner of Exchange Partner having overall responsibility for the conduct of Exchange Partner's affairs.

f. For Exchange Partner claims of \$100,000 or less, the Contracting Officer must, if requested in writing by Exchange Partner, render a decision within sixty (60) days of the request. For EXCHANGE PARTNER certified claims over \$100,000, the Contracting Officer must, within sixty (60) days, decide the claim or notify Exchange Partner of the date by which the decisions will be made.

g. The Contracting Officer's decision shall be final unless Exchange Partner appeals or files a suit as provided in the Act.

h. The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Office receives the claim (property certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each six (6) month period as fixed by the Treasury Secretary during the pendency of the claim.

i. Exchange Partner shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal or action arising under this Agreement and comply with any decision of the Contracting Officer or the District Engineer, U.S. Army Engineer District, Savannah.

7. NOTICES

Notices pursuant to this CMLA will be sent by the parties to each other by U.S. Mail or by rapid courier (such as Federal Express) addressed to the following addresses, or such other addresses as the parties may from time to time designate to each other in writing.

**U.S. ARMY CORPS OF ENGINEERS
ADDRESS**

EXCHANGE PARTNER

**ATTN: CESAS-RE-A
100 W. Oglethorpe Ave
SAVANNAH, GA 31401**

BASED ON THE FOREGOING, the Parties hereto, acting by and through their duly authorized representatives, have executed this CMLA as of the day and year first above written.

THE UNITED STATES OF AMERICA

BY: _____

NAME: _____

TITLE:

EXCHANGE PARTNER

BY: _____

NAME: _____

TITLE: _____

**ATTACHMENT “A”
CONSTRUCTION MONITORING COST ESTIMATE
CHARLOTTE USARC, CHARLOTTE, NC
REAL PROPERTY EXCHANGE**

DRAFT

To be completed in Letter Agreement prior to

Appendix 6

DRAFT

KEY TEAM MEMBER EXPERIENCE

Design Firm Name: _____

Construction Firm Name: _____

Provide descriptions of new construction building projects, up to five examples, completed within the last five years, which are similar to this project in size, scope (such as (but not limited to) training buildings, organizational maintenance shops) and dollar value. Provide up to one page per project and a color photo if available. In each description, describe the self-performed work.

Name of project/location: _____

General Scope of Project: _____

Role (prime, joint venture, subcontractor): _____

Self-performed work: _____

Construction Cost: _____

Original Beneficial Occupancy Date: _____

Final Beneficial Occupancy Date: _____

Original Contract Amount: _____ Final Contract Amount: _____

Appendix 7

The link below will provide all environmental documents completed on the exchange parcel.

<http://www.sas.usace.army.mil/re/acquisitions.html>

Appendix 8

